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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x
4 SYNTEL STERLING BEST SHORES
5 MAURITIUS LIMITED, SYNTEL, INC.,

6 Plaintiffs,

7 v. 15 Civ. 211 (LGS)

8 THE TRIZETTO GROUP, INC., et al.,

9 Defendants.

Jury Trial

10 -----x
11 October 26, 2020
12 9:30 a.m.
13

14 Before:

15 HON. LORNA G. SCHOFIELD,
16 District Judge

17 APPEARANCES

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19 Attorneys for Defendants/Counterclaim Plaintiffs
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1 THE COURT: Good morning, everyone. It's exceedingly
2 hard to smile with a mask on.

3 I thought since we had a couple minutes, what I would
4 do is try and give the oral ruling from the order that I issued
5 over the weekend about exhibits. And the point of this is just
6 to put on the record what my ruling is.

7 As you all know, Syntel seeks to admit certain
8 exhibits or sought to admit certain exhibits pertaining to a
9 Google search conducted by Mr. Stevenson, their technical
10 consultant, and purportedly relate to the cross-examination of
11 Mr. Bergeron. Those were Plaintiff's Exhibits 1531, 1532,
12 1533, 1530, 1535, and 1537.

13 So, first let me comment on the cross-examination
14 about the Google search. There was no objection to the
15 testimony, so what is in the record is in the record and it is
16 what it is. And I stated at the time that we would have to
17 take screenshots and mark them as exhibits. But counsel
18 declined because of the documents that are at issue. So no
19 screenshots were taken, and the exhibits now proffered are
20 actually not screenshots of what was shown to the jury on
21 October 21; instead, they predated the testimony by five days.

22 So, apart from what was said by the witness or adopted
23 by the witness, and observed although not preserved, there is
24 no evidence of what the Google searches were or what they
25 found, including website name, URL, or the contents of the

KAQ3SYN1

1 entirety of the documents that were retrieved. And just to be
2 clear, I'm not saying that none of that is in the record, but
3 it's only in the record to the extent it was observed, and it
4 is not in the record to the extent that it was stated by
5 counsel but not adopted by the witness.

6 The other thing I would mention is that the documents,
7 some of them were quite lengthy, but there is no document that
8 we saw in its entirety. There was no testimony comparing it to
9 the entirety of any documents in evidence.

10 There is a separate question, however, of whether the
11 documents and corresponding Google search pages that are the
12 subject of Mr. Stevenson's declaration are admissible as
13 evidence independent of Mr. Bergeron's cross-examination. And
14 that's the question that I primarily looked at.

15 I hold that they are not, because they have not been
16 properly authenticated under Rules 901 and 902, and because
17 they're potentially more prejudicial and confusing than
18 probative, and therefore not admissible under Rule 403.

19 Mr. Stevenson's declaration references three Facets
20 documents:

21 Facets Data Models Guide Release 4.51 February 2008.
22 Second, Facets Membership Maintenance Subsystem Guide Release
23 4.80 August 2010. And three, Facets Extended Enterprise
24 Provider Batch Import Release 4.41 February 2007, revised
25 April 2007.

KAQ3SYN1

1 These correspond roughly to trade secrets that are on
2 TriZetto's trade secret list: That is number 25, Data Models
3 Guide; 63, Membership Maintenance Subsystem Guide; 89, Provider
4 Batch Import Subsystem Guide.

5 So because of that, because there is a rough
6 correspondence to proffered exhibits that seem to pertain at
7 least generally to a trade secret and have some relevance under
8 Rules 401 and 402.

9 Regarding TriZetto's hearsay objections, portions of
10 the documents are hearsay, for example, the upload date and the
11 number of downloads. This information is inadmissible as
12 hearsay but could be redacted. But the lion's share of the
13 Facets documents are not hearsay because they're not offered
14 for the truth. So those things I don't find are impediments to
15 admissibility.

16 However, the proffered exhibits are not properly
17 authenticated under Rules 901 and 902. The rules of evidence
18 offer an avenue of authenticating by a written certification in
19 lieu of a live witness in these circumstances, but the
20 requirements of that rule are not met here. Federal Rule
21 902(13) allows authentication of "a record generated by an
22 electronic process or system that produces an accurate result,
23 as shown by certification of a qualified person that complies
24 with the certification requirements of 902(11) or (12). The
25 proponent must also meet the notice requirements of 902(11)."

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1 That's the notice requirement that's not satisfied.

2 The notice requirement of 902(11) requires that
3 "Before the trial, the proponent must give an adverse party
4 reasonable written notice of the intent to offer the record and
5 must make the record and the certification available for
6 inspection so that the party has a fair opportunity to
7 challenge them." No such notice was given in this case. There
8 was no notice before trial of Mr. Stevenson's affidavit or the
9 referenced exhibits.

10 So, in the alternative, authentication can consist of
11 written or oral testimony. In this case that would be under
12 Rule 901(b)(1), testimony that an item is what it is claimed to
13 be. The proposed exhibits are claimed to be documents
14 available on the internet on October 16 as a result of certain
15 Google searches.

16 However, Mr. Stevenson has never been identified to
17 the Court or to counsel as a trial witness, and apparently was
18 not identified as a possible witness during the prior lengthy
19 period of discovery.

20 So, for all those reasons, I find that there is no
21 evidence here to authenticate the proffered exhibits.

22 Even if there were, in the alternative, I am also
23 excluding them under Rule 403 on the ground that the probative
24 value is substantially outweigh by danger of unfair prejudice
25 and confusing the issues.

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1 First, the probative value is slight, if the hearsay
2 information about the number of downloads and dates of posting
3 are excluded. That leaves the jury with the information that
4 the Facets documents in question were available on the internet
5 on October 16, 2020, without any information about whether they
6 were posted as late as that date or substantially earlier, and
7 without any information about the number of downloads or
8 whether the information otherwise was "generally known," a
9 critical fact for a trade secret.

10 This slight probative value is substantially
11 outweighed by the danger of unfair prejudice and confusion.
12 The jury can be confused into thinking the proffered documents
13 are the documents displayed at trial, and the documents
14 displayed at trial are the same as the asserted trade secret
15 documents in evidence, when there is no evidence making these
16 connections. Or, the jury could improperly conclude that the
17 proffered exhibits somehow show that the asserted trade secrets
18 were generally known prior to October 16, when the non-hearsay
19 portion of the documents say nothing about that matter. Or the
20 jury could improperly conclude that because the proffered
21 exhibits are displayed on the internet, that the other asserted
22 trade secrets must be as well, even when there is no evidence
23 of the same.

24 So I'm excluding the proffered exhibits on the grounds
25 of Rule 403 as well.

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Finally, the documents are not properly admissible as demonstrative aids or usable as demonstrative aids. Demonstrative aids are typically used to demonstrate something somebody is saying. So, for example, a witness to better demonstrate oral testimony like many of the demonstrative aids we've seen collecting the evidence or highlighting portions of exhibits in evidence or illustrating testimony about background facts. Similarly, demonstrative aids are sometimes used by the lawyers in opening or summation to better explain the lawyer's argument or summarize the evidence. And even this Court sometimes uses a demonstrative aid like the PowerPoint that I used with the preliminary charge. But demonstrative aids are not a backdoor to getting documents in front of the jury that are not admissible as evidence.

I've already issued a written order to that effect, but I wanted my reasoning to be on the record.

I see it's 9:33 so we are a couple minutes late.
Mr. Groombridge, did you want to speak?

MR. GROOMBRIDGE: We have a number of other issues that we may need to bring to the Court's attention now because they pertain, we expect, to the witness presentations this morning.

THE WITNESS: Can you just give me the list?

MR. GROOMBRIDGE: We have objections to a number of exhibits that we understand are likely to be used in

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KAQ3SYN1

1 cross-examination of Mr. Plumpe or Mr. Sheets. And the ones to
2 which we object are Defendant's Trial Exhibits 1542 through
3 1545, and 1547 through 1550.

4 THE COURT: Okay.

5 MR. DE VRIES: Your Honor, I may be able to simplify
6 that a bit. I think there is actually -- I want to double
7 confirm -- but I think there is only three of those documents
8 that will pertain to my cross-examination of Mr. Plumpe. And I
9 can address that if whenever you'd like.

10 THE COURT: Let me get an idea of what the entirety of
11 the list is so I know what I absolutely must deal with now.
12 Because having brought the jury in early, I'm loath to have
13 them sit around.

14 Anything else? Was that it?

15 MR. GROOMBRIDGE: Just by way of reminder, we wanted
16 to make sure following Mr. Moore's redirect, the Court will
17 read the stipulation regarding rebates.

18 THE COURT: Thank you for the reminder.

19 MR. GROOMBRIDGE: We wanted to just inform the Court
20 that we will be filing a motion, a written motion under Rule
21 50(a) this morning just to make sure that's properly preserved.

22 THE COURT: Okay. So here's what I propose. I
23 propose we get the jury, we do Mr. Moore, we do the
24 stipulation, we do direct of whoever is next, and then during
25 the short break I will try to deal with exhibits, and during

KAQ3SYN1

Moore - Redirect

1 that time maybe you can refine or reduce what is at issue.

2 Okay?

3 MR. GROOMBRIDGE: Certainly, your Honor. Thank you.

4 THE COURT: Mr. Street.

5 (Jury present)

6 MR. GROOMBRIDGE: Your Honor, may I remove the mask?

7 THE COURT: You may.

8 THE DEPUTY CLERK: Just a reminder, you're still under
9 oath, sir.

10 THE COURT: You understand you're still under oath?

11 THE WITNESS: Yes, your Honor.

12 DANIEL MOORE,

13 called as a witness by the Syntel,

14 having been duly sworn, testified as follows:

15 REDIRECT EXAMINATION

16 BY MR. GROOMBRIDGE:

17 Q. Good morning, Mr. Moore.

18 A. Good morning.

19 Q. I just have one issue I'd like to clarify here, and let me
20 ask Mr. Stevenson to please put up Plaintiff's Trial Exhibit
21 1483.

22 Mr. Moore, do you recall that you testified about this
23 in the direct testimony and then again that Mr. De Vries asked
24 you some questions about these documents?

25 A. Yes.

KAQ3SYN1

1 Q. What I want to clarify and be sure about this. Now, the
2 jury has heard evidence of a number of employees who left
3 Trizetto and went to Cognizant, perhaps as many as something in
4 the 80s. This agreement, do you agree that just because this
5 is a form agreement you're not testifying that it was used with
6 any employees, other than the five that you specifically
7 mentioned?

8 A. That is correct.

9 MR. GROOMBRIDGE: Thank you, and I have no other
10 questions.

11 THE COURT: Thank you. You are excused.

12 (Witness excused)

13 THE COURT: Ladies and gentlemen, under the COVID
14 protocol, we need to give the booth a five-minute rest between
15 each witness. But in the meantime, I have a stipulation
16 between the parties that I would like to read into the record.

17 Mr. Street, can you tell me what court exhibit number
18 this is?

19 THE DEPUTY CLERK: This one will be 5.

20 THE COURT: You'll remember, ladies and gentlemen,
21 that a stipulation is an agreement between the parties as to
22 certain facts or other matters. And if counsel will agree, I'm
23 not going to read the full names of all the parties. I'll just
24 say "the parties have agreed." Is that okay?

25 MR. DE VRIES: Yes, your Honor.

KAQ3SYN1

1 MR. GROOMBRIDGE: Yes, your Honor.

2 THE COURT: So, the parties hereby stipulate to the
3 following facts:

4 First, the Master Services Agreement between TriZetto
5 and Syntel, which I will call the MSA, provided for the payment
6 of certain so-called transition rebates.

7 2. Syntel sent a notice of termination of the MSA and
8 the requested payment of the rebates due pursuant to the MSA on
9 November 20, 2014.

10 3. TriZetto disputed that it was obligated to pay,
11 and on January 12, 2015, Syntel sued TriZetto asserting certain
12 claims, including a claim to recover the rebates.

13 4. Syntel asked that TriZetto admit to the amount
14 owed, and TriZetto stated that it could not confirm "to the
15 cent" what rebates were owed.

16 5. TriZetto continued to dispute for legal reasons
17 that it was obligated to pay the amounts sought by Syntel.

18 6. As of October 16, 2020, TriZetto agreed to pay
19 \$5,183,241 reflecting the amount due for the rebates.

20 7. TriZetto paid that sum on October 19, 2020. And

21 8. As a result, Syntel's legal claim for the rebates
22 is no longer in dispute.

23 So that is the agreement of the parties.

24 Mr. Street?

25 THE DEPUTY CLERK: Two more minutes.

KAQ3SYN1

Plumpe - Direct

1 MS. JANGHORBANI: The next witness is actually remote.

2 THE COURT: Wonderful. Okay.

3 MS. JANGHORBANI: Your Honor, Syntel calls John
4 Plumpe.

5 THE COURT: It looks like we have the witness on the
6 screen.

7 (Witness sworn)

8 THE DEPUTY CLERK: Please state and spell your first
9 and last name for the record. Also if you can keep your voice
10 up so we can hear you clearly.

11 THE WITNESS: My name is John Plumpe.

12 J-O-H-N P-L-U-M-P-E.

13 THE COURT: Mr. Plumpe, this is Judge Schofield.
14 Would you mind getting closer to the mic?

15 THE WITNESS: I'm inching up towards my computer, your
16 Honor.

17 THE COURT: That's better. Thank you.

18 JOHN PLUMPE,

19 called as a witness by the Syntel,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. JANGHORBANI:

23 Q. Good morning, Mr. Plumpe.

24 A. Good morning.

25 MS. JANGHORBANI: Mr. Stevenson, if you can display

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KAQ3SYN1

Plumpe - Direct

1 the slide, please.

2 Q. Mr. Plumpe, can you briefly introduce yourself to the jury.

3 A. Yes. My name is John Plumpe, and I'm a managing director
4 of an economics consulting firm known as Epsilon Economics.

5 Q. Did you prepare slides to accompany your testimony today?

6 A. I did.

7 Q. Do you see them on the screen where you are?

8 A. I do.

9 Q. Are those the slides that you prepared?

10 A. Yes.

11 Q. Mr. Stevenson, can we go to slide two, please.

12 Mr. Plumpe, if you can walk us briefly through what
13 you do and your background.

14 A. Sure. I'm managing director of Epsilon Economics and I'm
15 based in Chicago. For the past 21 years, my practice has
16 focused on intellectual property valuation and damages
17 assessment in intellectual property litigation and related
18 litigation.

19 My education includes an MBA, which is a master of
20 business administration degree, from the University of Chicago,
21 and I also have a bachelor of science and a master of science
22 degree in mechanical engineering from the University of
23 Illinois.

24 Q. Do you have experience with the types of intellectual
25 property damages at issue in this case?

KAQ3SYN1

Plumpe - Direct

1 A. Yes. As I said, the past 21 years, I've focused on
2 intellectual property valuation, including the types of assets
3 at issue in this case.

4 Q. Have you testified previously as an expert?

5 A. Yes.

6 Q. If we can go to demonstrative three, Mr. Stevenson.

7 Do you have any professional affiliations?

8 A. Yes, I've highlighted a couple of them on the screen for
9 you here.

10 I'm active in the International Trademark Association,
11 which is the largest global organization that works on behalf
12 of intellectual property owners with particular focus on
13 trademarks and related assets, and I've had a number of
14 leadership roles, including the board of directors level brand
15 valuation project team.

16 I'm active within the Intellectual Property Owners
17 Association, and with the group I'm on the trademark, the U.S.
18 trademark litigation committee and I chair the monetary relief
19 working group.

20 Q. If you can describe for us briefly what it is that you did
21 in this case, and if we go to demonstrative four,
22 Mr. Stevenson.

23 A. Sure. I was retained by counsel to Syntel about two years
24 ago, a little over two years ago, to be involved in regards to
25 being a rebuttal witness to Mr. Britven's damage assessment

KAQ3SYN1

Plumpe - Direct

1 that he offered on behalf of TriZetto. So, in doing so, I
2 started my work, as shown here on the slide, by reviewing
3 TriZetto's counterclaims against Syntel, regarding the trade
4 secret misappropriation and copyright infringement claims. I
5 then reviewed a large number of documents and data information
6 that were provided by either TriZetto on one hand or Syntel on
7 the other in this litigation. I read the deposition
8 transcripts of numerous witnesses from TriZetto, as well as
9 from Syntel. I conducted research of information available in
10 the public domain that could have been relevant or shed some
11 light on the case, and I also read Mr. Britven's expert report
12 and prepared a rebuttal report and analysis to his report.

13 Q. You're here today talking about damages. Are you offering
14 an opinion that damages are appropriate in this case?

15 A. No, I'm here as a rebuttal to Mr. Britven's damages
16 calculation.

17 Q. If we can go to demonstrative five. If you can walk us
18 briefly through, Mr. Plumpe, your views as to Mr. Britven's
19 opinions.

20 A. Sure. Like I said, I'm here to provide some rebuttal
21 commentary opinions regarding what Mr. Britven did and what he
22 testified to. And I have two general conclusions regarding his
23 work. First --

24 THE COURT: You may have to get very close to your
25 computer. And we'll turn up the volume on this end as much as

KAQ3SYN1

Plumpe - Direct

1 we can.

2 THE WITNESS: I can also try putting on headphones,
3 although I don't know if that will work or not, but I can try
4 that.

5 Q. Do you think that will improve your sound quality,
6 Mr. Plumpe?

7 A. We can give it a try.

8 Q. Mr. Plumpe, can you hear me?

9 A. Can you hear me now?

10 Q. Yes, although I can't tell whether or not it's better but
11 we'll give it a try and see as we go along.

12 A. Okay. I'll try. Can you hear me now better? I'm holding
13 the microphone right next to my mouth.

14 Q. Yes, Mr. Plumpe.

15 A. Okay.

16 THE COURT: You had two general conclusions.

17 THE WITNESS: Yes. Okay.

18 A. So, in general, I determined that Mr. Britven's avoided
19 costs calculation and his reasonable royalty calculations are
20 economically unreasonable. The regarding the avoided cost
21 calculation, on the trade secret misappropriation claim, the
22 amount that Mr. Britven calculated and testified to is not
23 proportional to either Syntel's profits from using the trade
24 secrets or to TriZetto's losses that may have stemmed from
25 Syntel's use of the trade secrets. The avoided cost

KAQ3SYN1

Plumpe - Direct

1 calculation is not tied to the specific IP, the intellectual
2 property, that TriZetto claims is misappropriated. So as a
3 result, the avoided cost calculation is economically
4 unreasonable and is orders of magnitude different than Syntel's
5 profits or any losses suffered by TriZetto from Syntel's use.

6 Second, Mr. Britven's reasonable royalty calculation
7 suffers from the same flaws as the avoided cost calculation
8 because they simply are the avoided cost calculation divided in
9 half. So, starting with an avoided cost flawed calculation
10 resulted in a flawed reasonable royalty.

11 But perhaps most fundamentally is that the reasonable
12 royalty amount that Mr. Britven testified to is in fact not
13 reasonable, and is not an amount that Syntel would have agreed
14 to pay for the limited use of the trade secrets or copyright in
15 this case.

16 Q. Mr. Plumpe, let's move specifically to the avoided cost
17 calculation, if we can go to demonstrative six, Mr. Stevenson.

18 And could you explain to us why it is that you believe
19 that Mr. Britven's avoided cost calculation is economically
20 unreasonable?

21 A. Sure. I've listed some key thoughts here on the slide.
22 The first is that Mr. Britven's analysis of avoided costs
23 looked at the period from 2004 through a later part of 2014, so
24 it was over 10 years. And in doing so, he swept in everything
25 that TriZetto did during that 10-year period for Facets. And

KAQ3SYN1

Plumpe - Direct

1 in doing so, an award of the amount offered by Mr. Britven
2 would make TriZetto's entire 10-year development costless to
3 it, despite the fact that TriZetto continues to make abundant
4 use of Facets software, products, and services, and the various
5 assets. In fact, I think we've heard from I believe it was
6 Mr. Sanders and perhaps Mr. Noonan that revenues are well over
7 \$100 million per year.

8 On the other hand, there has been much less use by
9 Syntel that I will describe for you. The business that Syntel
10 has that has used or been accused of using trade secrets is
11 much, much smaller and much less use, and Syntel has not
12 offered a competing product to Facets. They only compete in a
13 narrow niche of consulting services regarding Facets
14 installation.

15 The fundamental disconnect here is there is no tie
16 between the alleged wrongdoing and the cost to developing the
17 asset, and we'll talk about that in a minute.

18 Then, if you look a little bit into how Mr. Britven
19 did his avoided cost calculation, he makes a critical error
20 that inflates his opinion more than threefold, and I'll show
21 that using Cognizant and TriZetto documents, if Mr. Britven had
22 just made the one adjustment that he needed to make, it would
23 have reduced his amount by two-thirds.

24 Q. Are you offering an opinion that avoided costs should never
25 apply?

KAQ3SYN1

Plumpe - Direct

1 A. No. It's just not appropriate in the way that Mr. Britven
2 calculated it in this case.

3 Q. If we can go to demonstrative seven. When might avoided
4 costs be appropriate?

5 A. Well, avoided costs may be economically reasonable in some
6 circumstances, and could be considered such as if the defendant
7 published the trade secret, thereby making them not as valuable
8 to the plaintiff. If the defendant created and launched a
9 competitive software product, which would involve using perhaps
10 all of the information that had been developed, all the files.
11 Or if the defendant had sold or licensed the trade secret to
12 somebody else.

13 Q. Did any of those things happen in this case, Mr. Plumpe?

14 A. If you go to the next slide, I've indicated that it's my
15 understanding that those have not happened in the case.

16 Q. If we can go to demonstrative 10, Mr. Stevenson.

17 If you can explain to us what's reflected on this
18 slide, Mr. Plumpe.

19 A. Sure. I mentioned a moment ago in the overview that there
20 was no tie between the alleged wrongdoing and the cost to
21 develop the assets, and I've shown that graphically here.
22 You'll see on the right bar that is the number approaching 300
23 million, and that was Mr. Britven's opinion of the avoided
24 costs for developing Facets during a period of more than 10
25 years. The little bar on the left is the bar that represents

KAQ3SYN1

Plumpe - Direct

1 the profits that Syntel actually earned from its Facets
2 consulting business during the period of 2012 through June of
3 2018. And this shows that Mr. Britven's avoided cost
4 calculation is in a completely different order of magnitude
5 than what Syntel actually did with their Facets consulting
6 business. And in fact, Mr. Britven's avoided costs opinion is
7 27 times the profits that Syntel made from providing Facets
8 consulting services for period of June -- 2012 through June of
9 2018.

10 THE COURT: Excuse me, what is that number? We have
11 300 million on the right. And how much on the left?

12 THE WITNESS: Mr. Britven's number on the right is
13 about 285 million, and as we'll see quite soon, your Honor, the
14 Facets consulting business profits that Syntel earned from all
15 six clients was a little over \$10 million.

16 THE COURT: Thank you.

17 Q. Mr. Plumpe, Dr. Bergeron testified that certain IP related
18 to Facets is not at issue in this case. How does that impact
19 your analysis of Mr. Britven's avoided costs?

20 A. Yes, I heard that testimony from Dr. Bergeron when he said
21 that the number of the assets were not at issue in this case,
22 were not being litigated. And that highlights that when
23 Mr. Britven swept in the entirety of everything that was
24 developed for Facets over that 10-year period, that he was not
25 connecting the assets that he was providing a cost to with the

KAQ3SYN1

Plumpe - Direct

1 actual accused misappropriation of Syntel. There's two
2 different things, two different buckets.

3 Q. Do you understand what Mr. Britven -- strike that.

4 Do you understand what a TPAA is, Mr. Plumpe?

5 A. Yes, I believe we've heard some testimony regarding that it
6 is a third-party access agreement.

7 Q. Is that relevant at all to your analysis of Mr. Britven's
8 calculation?

9 A. Sure. A third-party access agreement, which I believe is
10 sometimes been called an NDAA, a non-disclosure access
11 agreement, is an element that has been available, and it's
12 where TriZetto provides access through its clients to a
13 consulting vendor so that the vendor is able to provide
14 services, consulting services to the TriZetto client. It gets
15 the third-party consulting provider access to TriZetto files
16 that are part of the license that the TriZetto client, i.e.,
17 the payer, has already paid for or paid for maintenance with
18 the TriZetto.

19 Q. What does TriZetto charge to the consultant for access to
20 that information under a TPAA?

21 A. My understanding is that there's no charge for that.

22 Q. Why is that significant?

23 A. Well, the cost, there's no cost to the consulting provider
24 because it's already being provided to the client, the payer
25 that has already paid TriZetto for the software and for the

KAQ3SYN1

Plumpe - Direct

1 files and for everything else that they get when they take a
2 license. The fact they pay the annual maintenance fees that
3 Mr. Noonan or Mr. Sanders testified about earlier.

4 Q. Thank you, Mr. Plumpe. If we can go to demonstrative 11,
5 Mr. Stevenson.

6 And the jury has already heard about the Duff & Phelps
7 report. What does that refer to in this case?

8 A. The Duff & Phelps report was a report that was prepared at
9 the request of Cognizant regarding its acquisition of TriZetto.
10 So you may recall that Duff & Phelps, Mr. Britven described
11 Duff & Phelps as one of the leading valuations firms in the
12 world and I agree with him. Mr. Britven in fact worked for
13 Duff & Phelps until some point in 2014.

14 And Duff & Phelps was asked to do, in early 2015, was
15 to put themselves back in 2014, and carve out the value of
16 different categories of assets that Cognizant acquired from
17 TriZetto on November 20 of 2014. So this is something that was
18 prepared by Duff & Phelps at Cognizant's request because it's
19 required by accounting regulations and is something that the
20 company, the acquiring company, that's Cognizant, and its
21 auditors, accounting firms, used to provide a report to the
22 government and to investors regarding the value of the assets
23 that were acquired by Cognizant from TriZetto.

24 Q. Mr. Plumpe, Mr. Britven suggested that this report was not
25 of much use here because it was prepared for a different

KAQ3SYN1

Plumpe - Direct

1 purpose. Do you agree with that?

2 A. No. This report is extremely useful, because Cognizant
3 asked Duff & Phelps to look at what the assets were worth, and
4 what a willing buyer and a willing seller would have agreed to
5 regarding the values and rates for those assets.

6 Q. The jury has heard some testimony about a six-to-one ratio,
7 that TriZetto supposedly makes \$6 in selling services for every
8 \$1 they make from selling product licenses. Are you aware of
9 that testimony?

10 A. Yes, I heard that testimony.

11 Q. What's your view of that testimony?

12 A. I think that testimony needs to be a little more specific.
13 And I can explain that or if you'd like to ask a question, I'm
14 fine with that.

15 Q. I was going to suggest we go to the Duff & Phelps report.
16 Mr. Stevenson, if you can pull up 846 and go to page 151.

17 What are we looking at here, Mr. Plumpe?

18 A. This is an exhibit which is one of the calculations that
19 Duff & Phelps prepared in the purchase accounting report for
20 Cognizant. It's regarding the purchase price allocation of
21 TriZetto from 2014, and for the payer reporting unit, the payer
22 reporting unit, this is a profit-and-loss statement which
23 reflects the revenues or sales and costs and profits of a
24 portion of the payer business unit.

25 And what they're looking at here is the license fee,

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Plumpe - Direct

1 the license revenue that TriZetto had collected from licensing
2 programs like Facets, QNXP, and other platforms it licenses
3 into the payer business.

4 Q. What was the revenue they were getting from their licensing
5 business?

6 A. 2014, which was the last full year of actual data prior to
7 this report being prepared, shows that they were \$93,293,000.
8 So the number you are seeing here has the last three zeros cut
9 off just for brevity. That's the way accountants and
10 consultants typically prepare these types of reports when they
11 involve numbers like this.

12 So a little over 93 million was the license fee from
13 licensing different software platforms, products, to payers in
14 2014.

15 Q. If we can go to page 152 of the same exhibit. Mr. Plumpe,
16 what does this page reflect?

17 A. This is the next page of the report. It is another
18 exhibit. And this shows for TriZetto the consulting business
19 profit-and-loss statement. So the consulting business is where
20 it provides services to the clients that have their platforms,
21 their products, they provide consulting services.

22 So in the full year 2014, that looks like TriZetto
23 earned about \$151,436,000 in consulting sales or consulting
24 revenue.

25 Q. So how does all this pertain to the six-to-one ratio that

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1 the jury's heard about?

2 A. Well, it shows that the six-to-one ratio, if you look at
3 the details and you look at just the consulting business, the
4 consulting services is not a six-to-one ratio.

5 If you take 101 million and divide it by the 93
6 million from the previous slide, that ratio is about 1.6. So
7 it is less than two to one.

8 Q. If you can go to demonstrative 12.

9 Mr. Plumpe, what is obsolescence?

10 A. Obsolescence is a very common concept that applies to many
11 assets, most notably to the technology asset. It's written
12 about in all the valuations literature and written about in the
13 Duff & Phelps report.

14 Obsolescence is the concept of decay or depreciation
15 in value. Much like how you buy, if you buy a new car, you
16 drive it off the lot, the value continues to decline, continues
17 to decay. Similarly, if you think about your phone, and you're
18 constantly having software updates pushed out to you or the
19 apps on your phone, you constantly have to update your apps
20 because the older version is obsolete due to the advancement of
21 technology.

22 So obsolescence adjusts for the decay in the value of
23 technology assets.

24 Q. So, Mr. Noonan testified in this case that there have been
25 70 to 80 versions released of Facets. How does that interplay

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Plumpe - Direct

1 at all or does it interplay at all with this concept of
2 obsolescence?

3 A. It absolutely does. So the 70 to 80 versions, and I think
4 Mr. Noonan also testified that Facets is about 25 years old.
5 So just in simple math, you would say on average there have
6 been three versions of Facets per year over that time period.
7 And so, as new versions of Facets are released, that renders
8 the older versions obsolete in some respect.

9 Q. So you mentioned that the Duff & Phelps reports talks about
10 obsolescence. Mr. Stevenson, if we can go to page 56. It
11 talks about obsolescence rate.

12 How does this impact your analysis of Mr. Britven's
13 opinions?

14 A. So what we're seeing here is Duff & Phelps' conclusion
15 based on their discussion with Cognizant management regarding
16 the obsolescence rate of the technology that it was acquiring
17 from TriZetto. And what Duff & Phelps and Cognizant management
18 concluded at the time is that technology had a useful life of
19 eight years. And so, something that they made a note here that
20 something that was worth 100 percent eight years ago was only
21 worth 5 percent now.

22 So, in valuing the technology assets that were
23 acquired by Cognizant from TriZetto, Duff & Phelps in
24 consultation with management had to multiply the revenues
25 downward to account for obsolescence.

KAQ3SYN1

Plumpe - Direct

1 Q. If you apply this Duff & Phelps obsolescence factor to
2 Mr. Britven's opinion, what would be the change in his cost
3 number?

4 A. It would knock over two-thirds of it off. It would be a
5 little bit less than one-third of the total amount that he
6 testified to.

7 Q. Go now to a different topic. Moving to your reasonable
8 royalty opinion, Mr. Plumpe. And Mr. Stevenson, if you can
9 pull up demonstrative 13.

10 So, Mr. Plumpe, what is a reasonable royalty?

11 A. A reasonable royalty is a concept in intellectual property
12 litigation that puts together a hypothetical negotiation around
13 the time that the infringement first started. So on the
14 graphic you have two parties sitting across the table from each
15 other. And the concept here is that you have a willing buyer
16 and a willing seller who have to come to an agreement. And the
17 agreement is based on the full knowledge of all the facts and
18 circumstances and information, and they need to reach an
19 agreement that is something that both parties can live with.
20 And there is a number of factors that experts consider when
21 approaching a reasonable royalty.

22 Q. Is the reasonable royalty meant to reflect the price to
23 purchase the technology or is it meant to reflect something
24 else?

25 A. It is not a purchase. The reasonable royalty negotiation

KAQ3SYN1

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1 is for a period of time, just like any license negotiation
2 where one party wants to use another party's technology, it's
3 for a period of time. And it is not to take the -- not to buy
4 the asset, just to rent them, to license them for use for a
5 period of time. Much like you would rent an apartment.

6 Q. If we can go to demonstrative 14, Mr. Stevenson.

7 What is your view of Mr. Britven's reasonable royalty
8 opinion?

9 A. His reasonable royalty opinion is economically
10 unreasonable, and he starts with the avoided costs, and we've
11 just talked about all the problems with his avoided cost
12 analysis. So he starts with the avoided costs, and in the end
13 he concludes it should be split in half and Syntel should have
14 to pay half of the avoided costs for a reasonable royalty.

15 Q. Mr. Britven, testified that the \$2.7 billion acquisition of
16 TriZetto by Cognizant helps to support his avoided cost and
17 reasonable royalty numbers. Is that consistent with your
18 views?

19 A. No. I completely disagree with that.

20 Q. Why?

21 A. Well, the \$2.7 billion acquisition of Cognizant, I mean of
22 TriZetto by Cognizant, is really irrelevant in this case
23 because we have more specific data regarding the technology
24 assets that were acquired. The technology assets that were
25 acquired was much more than the trade secrets. In fact, I

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Plumpe - Direct

1 believe we talked or there has been testimony earlier about
2 patent and other assets. So, a starting point for any analysis
3 regarding that transaction is not 2.7 billion. It is the value
4 of the payer business technology. And then you have to look
5 specifically to trade secrets within that bucket.

6 Q. We've been speaking about avoided costs and reasonable
7 royalty in the context of trade secrets. If you can turn
8 briefly to Mr. Britven's opinions as to the copyright and
9 reasonable royalty.

10 Mr. Stevenson, if you can go to demonstrative 15.

11 What is your view of Mr. Britven's copyright
12 infringement reasonable royalty?

13 A. Well, his view of a copyright infringement reasonable
14 royalty is also economically unreasonable. He, very much like
15 he did for the trade secrets, he based it on the value of the
16 Data Dictionary instead of a license for use of the Data
17 Dictionary. So he took, he put together what his view of the
18 calculation of the avoided costs to develop the Data Dictionary
19 was, and he again just put that and divided it in half. But
20 that includes the avoided costs that he attributed to trade
21 secrets too, not just the copyright.

22 So the number is, again, it starts from a flawed
23 premise so the result is flawed.

24 I would also note that my understanding of copyright
25 infringement litigation, having been involved in the industry

KAQ3SYN1

Plumpe - Direct

1 for 21 years, is that copyright infringement reasonable
2 royalties are often considered as a proxy for lost profits if
3 the damages -- if the lost profits damages to the copyright
4 owner could not be determined.

5 However, as we saw in Mr. Britven's testimony, he
6 calculated a view of the lost profits of TriZetto.

7 Q. Generally, what's your view of his calculation of the lost
8 profits?

9 A. So that number I believe is about \$8.5 million, and it is
10 more reasonable. It is the right ballpark here. There are a
11 few things in his calculation that I think he should have done
12 differently. But it is certainly in the right ballpark.

13 Q. Is that lost profit calculation limited to the conduct at
14 issue in this case?

15 A. No. So, the lost profits that he calculated was for -- I
16 believe it was related to UHG. And he made some assumptions
17 and some calculations that I think could have been done a
18 little bit differently that may have resulted in a different
19 lower number. But for the purposes of being conservative here
20 and lean toward TriZetto, again, the number's in the ballpark.

21 Q. And does the lost profit number tie specifically to the
22 three documents at issue in the copyright case?

23 A. Not that I am aware of, no. I believe it was, I believe
24 the starting point was the totality of Syntel's revenues from
25 offering its Facets consulting business.

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Plumpe - Direct

1 Q. If we can go to demonstrative 16, Mr. Stevenson.

2 Did you also calculate a reasonable royalty?

3 A. Well, what I've shown here is an illustration of what a
4 royalty payment would have been if one -- a royalty rate for
5 technology specified in the Duff & Phelps report. When Duff &
6 Phelps conducted its valuation of TriZetto's assets, it valued
7 the technology using a royalty rate of 10 percent. And if you
8 look at Syntel's Facets consulting revenues from 2012 through
9 June of 2018, its revenues to UHG were \$17.2 million.

10 So I've shown here an illustration if you take those
11 revenues that Syntel earned, the sales Syntel earned from UHG
12 of \$17.2 million and multiply it by the 10 percent royalty rate
13 specified in the Duff & Phelps report regarding TriZetto
14 technology, you get \$1.7 million.

15 Q. Can you go to the Duff & Phelps report and go to page 57.
16 And you will see at the top of the page it discusses royalty
17 rate. Is that consistent with what you've done here,
18 Mr. Plumpe?

19 A. Yes. Duff & Phelps concluded, after discussions with
20 management and its own research and looking at the information
21 that was available to it, that the royalty rate of 10 percent
22 was selected based on the significance of the technology asset
23 to the payer business and to the overall company relative to
24 other assets.

25 Q. The jury heard testimony from Mr. Britven about a \$950

KAQ3SYN1

Plumpe - Direct

1 million calculation of royalty in the Duff & Phelps report.

2 Are you familiar with that testimony?

3 A. I did hear that testimony.

4 Q. And Mr. Britven testified that he believed that that helped
5 justify his opinion in this case. Correct?

6 A. I believe I heard that. I believe I heard that testimony.

7 Q. What is your view of the testimony as to the \$950 million
8 number and how that impacts Mr. Britven's opinion?

9 A. Well, the \$950 million number is nowhere in the Duff &
10 Phelps report. Mr. Britven did not describe what that number
11 was. He did not show in the Duff & Phelps report where that
12 number came from. So, I don't see any connection between that
13 \$950 million number and monetary relief or damages in this
14 case.

15 Q. If we can go to demonstrative 17. The jury's heard about
16 profits and lost profits. If you can walk us through what
17 profits are and walk us through what lost profits are.

18 A. Profits is a very simple determination. The profits of a
19 business are the revenues or sales that the business earns,
20 minus the costs that are necessary that the business spent in
21 order to earn those sales. So profits are sales minus the
22 costs.

23 Another way of thinking about profits is you take the
24 revenues or sales times what's called a profit margin which is
25 a percentage calculation that effectively take --

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Plumpe - Direct

1 Q. You were just turning to lost profits I believe.

2 A. Correct. Can you hear me now?

3 Q. We can right now.

4 A. Lost profits are a very similar concept. Lost profits are
5 what were the profits that a plaintiff would have earned had
6 the defendant had not committed the infringement that it is
7 accused of infringing.

8 Q. If we can go to demonstrative 22, Mr. Stevenson.

9 And this does this summarize your views as to
10 Mr. Britven's opinion?

11 A. Yes, it does. For the misappropriation of trade secrets
12 and confidential information, Mr. Britven's avoided development
13 costs for the 10-year period 2004 to 2014 are economically
14 unreasonable and overstated.

15 His reasonable royalty calculation, which is simply
16 50 percent of the avoided costs, of all avoided costs, again,
17 economically unreasonable and overstated. It is not the
18 outcome of what would happen in a reasonable royalty
19 negotiation.

20 And the copyright infringement claim, again,
21 Mr. Britven only talked to the jury about reasonable royalty
22 where he took 50 percent of certain avoided costs, and that
23 number is economically unreasonable and overstated.

24 Q. If we can go to demonstrative 23, and we promised we were
25 going to talk about the profits from the consulting business.

KAQ3SYN1

Plumpe - Direct

1 Can you walk us through what's reflected in this slide.

2 A. Sure. If you look at Syntel's Facets consulting business
3 from June 2012 through June 2018, it earned revenues on about
4 27 projects. It had 27 projects. And from all six clients to
5 which it sold some of those 27 projects, profits that Syntel
6 earned from the Facets consulting business were \$10,270,349.

7 You may recall then that there was a TPAA in place
8 with the payer client CDPHP. So if you move over to the bottom
9 right, those, the top two -- the bottom two bars, there is a
10 little bracket that shows if you exclude CDPHP from the
11 analysis, then Syntel's profits from its Facetting consulting
12 business from five clients, not to include CDPHP, were
13 \$3,256,294.

14 And then the last in which I looked were from UHG
15 only. A number of witnesses talk about UHG. And the UHG was
16 also the only client that in those 27 projects that Syntel did
17 any complex consulting work. There were two complex consulting
18 projects for UHG, and the profits on those projects to UHG came
19 to \$823,889.

20 Q. So, then did you reach an opinion as to, if damages are
21 appropriate in this case, what they could potentially be?

22 A. Yes.

23 MS. JANGHORBANI: If we can go to demonstrative 24,
24 Mr. Stevenson.

25 A. What I've shown here are for misappropriation of trade

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Plumpe - Direct

1 secrets and confidential information, Syntel's profits on its
2 projects that it earned revenue from UHG were \$823,889.

3 Correspondingly, if you look at -- if you assume that if Syntel
4 was not in the market offering those projects to UHG and
5 instead TriZetto made those sales, TriZetto's lost profits on
6 those sales would have been more. They would have been
7 4,611,523.

8 Q. Why is there such a huge difference between those numbers?

9 A. Well, Syntel, for the UHG project, Syntel offered the
10 projects at lower profit margins. They weren't as profitable
11 as what TriZetto typically offered its projects for. TriZetto
12 typically earned higher profit margins than Syntel did on those
13 actual UHG projects.

14 Q. If we can go to demonstrative 25. I think we walked
15 through most of these opinions, but if you can summarize
16 briefly and also explain what your opinion is as to the
17 copyright infringement damages.

18 A. Sure. So for misappropriation of trade secrets and
19 confidential information, Mr. Britven's avoided development
20 costs are not appropriate and economically unreasonable. I
21 illustrate reasonable royalty using the 10 percent technology
22 royalty rate specified in the Duff & Phelps report for the UHG
23 projects that Syntel sold would amount to \$1.7 million.
24 TriZetto's lost profits on the UHG work, if it had sold the UHG
25 work instead of Syntel, TriZetto would have earned about \$4.6

KAQ3SYN1

Plumpe - Direct

1 million.

2 Syntel's unjust enrichment or its profits that it
3 earned on the project to UHG from its Facets consulting
4 business were about 824,000, shorthand of which can be written
5 as \$0.8 million.

6 On the copyright infringement claim, the reasonable
7 royalty as shown by Mr. Britven is economically unreasonable,
8 and in light of other information available in the case, one
9 can easily determine TriZetto's lost profits or Syntel's unjust
10 enrichment for its profits which, again, from the Facets
11 consulting business, which is broader than the use of just the
12 copyright, of course, that was about \$824,000 which can be
13 written as \$0.8 million.

14 Q. Thank you, Mr. Plumpe. I just have one final question. We
15 heard testimony from Mr. Britven that he didn't have access to
16 Syntel's actual financial information so that he could be
17 confident in his profit and lost profit numbers. What is your
18 view of that, Mr. Plumpe?

19 A. I'm not sure why he said that. Because when I issued my
20 report in 2018, I was provided with significant amount of
21 financial data that was taken directly from Syntel's accounting
22 system of record. That's the PeopleSoft accounting database
23 that is maintained in the ordinary course of business and is
24 used by its auditors.

25 And so, I requested a significant amount of data

KAQ3SYN1

Plumpe - Direct

1 regarding Syntel's revenues and costs on a very detailed basis,
2 and that's how I prepared my analysis.

3 Q. Did Mr. Britven have access to that information?

4 A. My understanding is that at some point that information was
5 provided to him.

6 MS. JANGHORBANI: Thank, Mr. Plumpe. I have no
7 further questions.

8 THE COURT: My question is for cross of this witness,
9 does that raise the issue that we had alluded to before?

10 MR. DE VRIES: Yes, your Honor.

11 THE COURT: I think we'll take a quick midmorning
12 break right now, 10 minutes. Hopefully 10 minutes. And we'll
13 see you back soon.

14 (Jury excused)

15 THE COURT: Who wanted to raise the issue first?
16 Maybe you should tell us first which exhibits you plan to use
17 and if I could get a copy of them.

18 MR. DE VRIES: Yes. With your Honor's permission, I
19 can hand this up.

20 THE COURT: That's fine. If you can maybe hand them
21 to Mr. Street. Which exhibit numbers are they?

22 MR. DE VRIES: So it is DTX 1542, DTX 1543, and DTX
23 1545, your Honor.

24 THE COURT: I assume these are not in evidence, and
25 you would either offer them now, subject to whatever foundation

KAQ3SYN1

Plumpe - Direct

1 you can lay, or you would offer them during testimony.

2 Is that what we're talking about?

3 (Continued on next page)

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KAQTSYN2

1 MR. DE VRIES: Yes, your Honor, and they are Syntel
2 Atos publicly available documents from their internet website
3 with statements that, from our perspective, directly rebut two
4 of the primary messages that Mr. Plumpe just provided to the
5 jury. One is the avoided cost is not commensurate with the
6 actual profits and, two, that the \$2.7 billion, which is in its
7 Duff & Phelps report, is highly relevant, according to
8 Mr. Plumpe, to his damages analysis.

9 To put these in perspective, two of the documents are
10 Atos Syntel public financial documents. One is a registration
11 statement from 2018, the other is from '2020, it's an investor
12 presentation. They both go into detail about the Syntel
13 business and how it's done since the merger, and so that is DTX
14 1542 and DTX 1545.

15 And then the third, DTX 1543 --

16 THE COURT: I'm a little confused. You said two are
17 Atos public financial documents, one is a registration
18 statement and one is investor presentation. And what website
19 are they from?

20 MR. DE VRIES: On the Atos website.

21 THE COURT: Okay.

22 MR. DE VRIES: So those are 1542 and 1545. 1542 is
23 the investor presentation, 1545 is the registration statement.
24 And again, Atos is a publicly traded company that makes these
25 disclosures pursuant to securities regulations.

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KAQTSYN2

1 Okay. And then the last one, your Honor, is 1543,
2 it's a joint statement from Syntel and also Atos about the 2018
3 acquisition of Atos by Syntel. Mr. Plumpe will testify here,
4 if he does so consistently with his deposition, that the \$2.7
5 billion acquisition of Cognizant by Trizetto is relevant to the
6 damages analysis because it involves a transaction for the
7 intellectual property. So, of course, does the 2018
8 acquisition of Atos by Syntel if we're right about the
9 intellectual property. And there's a specific statement in
10 that merger announcement about the investments that Syntel made
11 in IP. It's a statement made by the co-chairman of Syntel.
12 And I could show another document, about which there no
13 dispute, that the IP investments relate, not surprisingly,
14 perhaps, to the tools and accelerators that we talked a lot
15 about.

16 THE COURT: So I'm concerned with what they show only
17 to a limited extent, and that is to establish their relevance.
18 It sounds like they are relevant, but what about authentication
19 and hearsay? Why don't you address authentication for each
20 document and then hearsay.

21 MR. DE VRIES: As your Honor knows better than I do,
22 there's not a requirement to have testimony to authenticate
23 documents, and these documents are authentic on their face.
24 They're provide by Atos and Syntel.

25 THE COURT: You're saying they're self-authenticating

KAQTSYN2

1 documents under 903.

2 MR. DE VRIES: Yes.

3 THE COURT: 903 what?

4 MR. DE VRIES: I think it may be 11, your Honor, but I
5 honestly have to do a search, and so we'll look for that right
6 now.

7 THE COURT: Okay.

8 MR. KANE: Your Honor, Ryan Kane on behalf of
9 TriZetto.

10 THE COURT: Yes.

11 MR. KANE: I believe we're looking for 902(7), trade
12 inscriptions and the like, self authenticating.

13 MR. DE VRIES: Thank you, Mr. Kane.

14 I also note, I don't believe there is a dispute that
15 these are --

16 THE COURT: Wait, trade inscriptions and the like. An
17 inscription, sign, tag or label purporting to have been affixed
18 in the course of business and indicating origin, ownership or
19 control. I don't think that's it.

20 But anyway, you were telling me you think there's not
21 a dispute as to authentication but the dispute is something
22 else, in which case I will let Mr. Groombridge tell me what the
23 dispute is.

24 MR. DE VRIES: Correct. There were five of these
25 documents that all came from the Atos Syntel website. We

KAQTSYN2

1 initially have a declaration, as I understand it. I don't
2 believe it's necessary under the rules, but I don't think there
3 is a dispute. On two of them they agreed. On these three, I
4 think that there is a concern that we're somehow attempting
5 to -- this is how I will characterize it -- put in additional
6 evidence in support of our direct case rather than rebut the
7 testimony that we just heard from Mr. Plumpe. Your Honor, I
8 will assure you that I only intend to ask him questions that
9 directly rebut the testimony that he just gave the jury about
10 the relationships that I just described.

11 THE COURT: I'll let Mr. Groombridge speak for
12 himself.

13 MR. GROOMBRIDGE: Thank you, your Honor, and I would
14 treat --

15 THE COURT: Sorry to interrupt you, this was
16 Ms. Janghorbani's witness, but I take it you're making an
17 evidentiary argument?

18 MS. JANGHORBANI: He is, your Honor. We didn't know
19 through whom they would attempt to offer these.

20 THE COURT: That's fine.

21 MR. GROOMBRIDGE: Your Honor, I will start with the
22 first two, which are Defendant's Exhibit 1542 and 1545.

23 First of all, your Honor, we have a hearsay objection
24 that these are statements made by the parent company Atos, not
25 by Atos Syntel, and they are apparently taking from the Atos

KAQTSYN2

1 website. And so one of our concerns here, your Honor, is that
2 they're going to attempt to use these to say that Atos, the
3 parent company, makes a huge amount of money, one of the
4 documents is the first half results, and they're going to say:
5 Well, Atos made 5.6 billion Euros, that's more than \$6 billion,
6 and they will argue that is relevant either to damages or to
7 punitive damages, which we think are legally incorrect, and I
8 will come back and say why on damages, compensatory damages.

9 We have a foundation objection to all three of these
10 documents in that in order for them to be relevant, the
11 statements must be tied to the intellectual property that is
12 the subject of this the dispute, not just any intellectual
13 property. And the fact here, your Honor, as we see it, is the
14 intellectual property that's in dispute in this case is a tiny
15 portion of the intellectual property of either Syntel or parent
16 company Atos. And that it is because of the lack of foundation
17 connecting these statements and these numbers to the
18 intellectual property that is the subject of this dispute, what
19 you have here is an effort to suggest something that isn't
20 right, and so there's a foundation problem, there's a relevance
21 problem, and there's a Rule 403 problem.

22 And that, for example, if you look at the registration
23 statement is apparently the European equivalent of something
24 like a 10K, it's a 380-page document, and we understand it's
25 going to be offered into evidence so that it could be used for

KAQTSYN2

1 the truth of anything that is stated in here. And there's a
2 huge amount of information in here, including, for example, if
3 you were to dig into it you would actually find a number for
4 litigation reserve, not I think for this lawsuit, but in
5 general. And we suggest that is a perfect example of what
6 shouldn't be going to the jury.

7 And there is law, and this mostly comes up in the
8 patent context, so the cases that we think are most relevant
9 are from the federal circuit, both *Uniloc case, Uniloc USA v.*
10 *Microsoft Corp.*, 632 F.3d 1292, 1319, which is the Federal
11 Circuit, 2011, and later *Dynamics, Inc. v. Quanta Computer,*
12 *Inc.*, 694 F.3d 51, 68, that's the federal circuit in 2012,
13 which were cases that reversed judgments based on jury verdicts
14 because very large numbers had been admitted into evidence that
15 have no connection with the actual intellectual property that
16 was at issue and alleged to have been infringed or
17 misappropriated. And the Circuit Court there used the term
18 "tainted." In fact, one of the cases quotes a district court
19 saying "the \$19 billion cat was never put back in the bag."
20 And once we have these kind of numbers that are untethered to
21 the alleged misappropriation, these cases say no curative
22 instruction or nothing can ever fix that, the jury heard an
23 enormous number. So to the extent that is going on here, we
24 object.

25 And we think finally as the last document about the

KAQTSYN2

1 acquisition, Defendant's Trial Exhibit 1543, again we think the
2 same principle applies, that what is going to be made -- an
3 argument is going to be made that because Atos paid \$3.4
4 billion to buy Syntel, that shows that this intellectual
5 property must have tremendous value, whereas in fact there's no
6 foundational evidence connecting this intellectual property
7 with what was the basis for the purchase price. And this
8 document on its face says certain things that are inconsistent
9 with the thesis that we believe TriZetto is offering, but we
10 have no witness yet coming who can address these things. So
11 even if they were permitted to make this, we are now without a
12 means to respond it because our witnesses have come and gone.

13 So we think this is simply not appropriate and that
14 putting up big numbers saying well, that just shows how
15 valuable some intellectual property is, unless you have
16 rigorous connecting evidence saying it's actually this
17 intellectual property, that's improper and, in the words of the
18 federal circuit, it taints the entire trial.

19 THE COURT: I understand your arguments.

20 Go ahead, Mr. De Vries.

21 MR. DE VRIES: Your Honor, let me assure the Court and
22 directly respond to Mr. Groombridge that I intend to focus only
23 on Syntel-specific information that we can show is directly
24 tied to what is in this case. And if we are not able to do it,
25 we will be irremediably prejudiced because the jury will be

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1 left with a profound misimpression based on what Mr. Plumpe
2 just told them.

3 I saw them writing down things that I believe -- I
4 don't know what they were writing, but at times when he was
5 talking about things that I can directly call into question
6 from Syntel-specific information in these documents, statements
7 made by Syntel and about the Syntel business that relate to
8 healthcare and insurance companies and the IP in dispute, the
9 tools.

10 I am not intending to talk about a litigation reserve.
11 I'm not intending to ask him about the huge amount of money
12 that Atos made. I am here to ask him questions about
13 compensatory damages.

14 By the way, the overall amount of money that Atos
15 Syntel made is certainly relevant to punitive damages. As I'm
16 sure your Honor knows, sometimes the amount of punitive damages
17 is bifurcated. Your Honor's instructions specifically instruct
18 the jury that they are to take into account the financial
19 condition of the company. That said, I think that that's a
20 hypothetical issue because I do not intend to ask Mr. Plumpe
21 about the amount of money that Atos made. I intend to ask him
22 about three never specific parts of these documents, all of
23 which relate directly to Syntel's business related to this
24 case.

25 And then the last thing I will say, your Honor, is

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1 there is no hearsay problem here. They're the same company
2 now. They have been acquired. This is an admission of a
3 corporate party opponent --

4 THE COURT: Sorry to interrupt you. At the time the
5 documents were published, were they one company?

6 MR. DE VRIES: Yes. Let me clarify one thing, which
7 is the merger announcement, 1543, that's actually a statement
8 of Syntel, a joint statement of Syntel and Atos. And so they
9 weren't, as of that time, merged, but this is a statement that
10 Syntel made. In fact, what I'm planning to point to is a
11 statement of a Syntel co-head person. But in any event, there
12 isn't a hearsay problem and there's no indicia of unreliability
13 here. These are documents provided to securities regulations.
14 There is nothing inherently unreliable about those.

15 But the last thing I will say is I believe --

16 THE COURT: And the other two documents -- sorry to
17 interrupt, the other two documents postdated the merger?

18 MR. DE VRIES: Yes, your Honor. And they both
19 specifically say -- and just to tell your Honor so you know
20 where I'm going, and here they talk about the business post
21 merger. Because one thing, in case it wasn't clear, he is
22 talking about profits only through June 2018. He is telling
23 the jury that we shouldn't get our damages for that. We asked
24 Atos Syntel to provide those data. They would not do so. And
25 your Honor's instructions, as you know, say: What are damages

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1 through October 17, 2020? The jury, we think, will be misled
2 into thinking oh, I guess that they haven't made all this much
3 money, when all they've been given by Mr. Plumpe right now is
4 an incomplete picture.

5 THE COURT: So what is the number?

6 MR. DE VRIES: I can show your Honor.

7 THE COURT: Just tell me in order of magnitude what
8 the number is. You're saying this is money --

9 MR. DE VRIES: Yes, so in one there is a statement --
10 I want to make sure I got it exactly right.

11 In the 2018 registration statement there is a
12 paragraph about Syntel at page 35. It talks about half a
13 billion Euros in full pipeline with a hundred percent retention
14 of Syntel customers.

15 And I'm going to say, so that your Honor has no
16 concerns here: You understand, Mr. Plumpe, that Facets
17 consulting is not the only business that Syntel does, right?
18 So I'm not going to suggest otherwise, and I will specifically
19 acknowledge that, but as you can see here, half a billion Euros
20 in full pipeline. Very similarly, at page 18 of the 2020
investor presentation, under an entire slide about Syntel, it
talks about 107 deals closed in the first half of this year,
pipeline opportunities a billion Euros. Again, I am going to
say, and it's apparent on the face of that document, these
aren't all, obviously, Facets consulting, but what we're seeing

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1 here is an indication of the merger and post-merger business
2 going well. That's what they're telling the market.

3 MR. GROOMBRIDGE: Your Honor, if I may respond.

4 THE COURT: In just a moment, thank you.

5 So Mr. De Vries, to the extent the documents were
6 admitted, the plan would be to send to the jury only the
7 portions that were actually read into the record?

8 MR. DE VRIES: We can certainly do that, and I have
9 not intention of --

10 THE COURT: So there won't be any prejudice from
11 either irrelevant or confusing statements that might give the
12 jury the wrong impression.

13 MR. DE VRIES: Absolutely.

14 THE COURT: Mr. Groombridge?

15 MR. GROOMBRIDGE: Your Honor, this is exactly the
16 problem that we see under the cases that I mentioned. I'm
17 looking at the page that Mr. De Vries mentioned. He said he
18 wants to talk about 107 deals worth a billion Euros, and then
19 if we look at the lower part of the page, it tells us one is
20 for a global truck manufacturer and one was for one of the
21 world's leading food and beverages company and one was for a
22 leading European conservation charity and another for a
23 multinational credit reporting company. Those obviously have
24 nothing whatsoever to do with the intellectual property that is
25 at issue in this lawsuit. What is going on is an effort to

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1 pump up the numbers by saying look at these big numbers,
2 therefore our damages demand is reasonable. That's exactly
3 what the law prohibits.

4 THE COURT: Mr. De Vries, do you have a number that is
5 traceable to Facets as opposed to these bigger numbers? Even
6 with your caveat that the Facets piece is only a piece, that
7 doesn't tell the jury very much about how big it is and doesn't
8 tell me very much about how probative it is.

9 MR. DE VRIES: The answer is I don't, and it's
10 Syntel's fault. Unlike every other case, as Mr. Plumpe will
11 admit, what typically happens is the parties provide
12 supplemental expert reports and provide supplemental financial
13 data. We asked Syntel to provide that to us. That was
14 ignored. And now Mr. Plumpe, with the knowledge that we don't
15 have these data, is telling the jury: Yeah, jury, you've been
16 asked to decide damages through last week, but ha ha, we never
17 gave them the data, and so I'm going to tell you that we never
18 made that much money.

19 So the very direct answer to your Honor's question is
20 no, I don't know that amount, but, two, as you heard before
21 Mr. Groombridge said, and I know he doesn't mean to suggest
22 about me personally, but I don't intend to say what
23 Mr. Groombridge said. In fact, before Mr. Groombridge got up I
24 told your Honor that I would not do that and acknowledge the
25 things that he's talking about.

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1 So I think that if they had been concerned about
2 giving us the real data, they should have done what we asked
3 and provided it to us.

4 THE COURT: So the problem here is that I don't have
5 the documents, I didn't have any prior notice of this, I don't
6 want to prejudice the jury, and so I am not going to allow the
7 documents into evidence. I think the hearsay problems is not a
8 problem, but I think that they are potentially prejudicial
9 because there's no way to break out the piece that is relevant
10 to Facets. So I'm not going to allow them on that basis.

11 But one question I would have is, Mr. Groombridge,
12 would you object to cross-examination that didn't introduce the
13 billion Euro numbers and didn't introduce the document in the
14 form of a leading question but without the admission of the
15 documents? So we would excuse the proving up of his trying to
16 make the point he's making but without the billion dollar
17 number.

18 MR. GROOMBRIDGE: We do not object to that, your
19 Honor.

20 THE COURT: Okay.

21 MR. DE VRIES: And your Honor, then I guess for the
22 merger, where he has testified to the \$2.7 billion merger
23 number and the underlying valuation is relevant, where I could
24 draw a connection between the IP investments and the merger
25 announcement and the tools based on their own documents, may I

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1 use that document?

2 THE COURT: Any objection?

3 MR. GROOMBRIDGE: If the connection is -- we have no
4 objection to the cross-examination. It may be a point for
5 redirect, your Honor, if in fact no connection to these tools
6 is established.

7 THE COURT: It sounds like there is a connection to
8 the tools, so you may use that.

9 MR. DE VRIES: Your Honor, may we ask for an
10 instruction from the Court to the jury, it doesn't have to be
11 right now, but that tells the jury that Syntel did not provide
12 financial data after June of 2018, though it was requested to
13 do so? So that the impression that the jury has been left with
14 Mr. Plumpe's testimony --

15 THE COURT: So what I will do is let you talk to each
16 other about is that. I don't want casting stones, so I don't
17 want "even though it was requested, they didn't give it," but
18 the simple fact of what your expert had or didn't have I think
19 probably could be stipulated to.

20 MR. DE VRIES: Yes, your Honor, I will work with
21 Mr. Groombridge or Ms. Janghorbani, whoever is appropriate.

22 THE COURT: Okay, let's get the jury.

23 MR. DE VRIES: Your Honor, may I go ahead and start
24 passing things out?

25 THE COURT: You may.

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Plumpe - Cross

1 MR. DE VRIES: My cross binders will have the
2 documents in them. Of course, I'm not going to use them.

3 (Continued on next page)

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Plumpe - Cross

1 (Jury present)

2 MR. DE VRIES: Your Honor, may I remove my mask?

3 THE COURT: You may.

4 CROSS-EXAMINATION

5 BY MR. DE VRIES:

6 Q. Good morning, Mr. Plumpe.

7 A. Good morning.

8 Q. We've met each other before, right?

9 A. Correct.

10 Q. I've had the chance to ask you questions and for you to
11 answer them under oath?

12 A. Yes, I believe you took my deposition about a year and a
13 half -- a little over year and a half ago.

14 Q. Now I would just like to make sure I understand at a high
15 level, your opinion is that if the jury finds that Syntel
16 misappropriated the trade secrets, that total damages should be
17 a little less than \$5 million maximum, right?

18 A. Well, I think I testified to different measures of monetary
19 relief, such as Syntel's profits or TriZetto's lost profits. I
20 don't have the notice in front of me, but I believe TriZetto's
21 lost profits on UHG were about \$4.6 million.

22 Q. None of those numbers was more than \$5 million, right?

23 A. Correct.

24 Q. For eight years of misappropriation of 104 trade secrets,
25 your opinion is that Syntel should pay less than \$5 million,

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Plumpe - Cross

1 right?

2 A. Well, if you look at the use that Syntel had, their
3 revenues were pretty limited in the consulting business,
4 particularly with UHG. So the use is reflected in the profits
5 and revenues that Syntel earned from the Facets consulting
6 business.

7 Q. Mr. Plumpe, I'm short on time. May I ask you to just
8 answer my question?

9 A. Okay. I thought I was, but please go ahead.

10 Q. Your total damages, if the jury finds that Syntel copied
11 the Data Dictionary source code into its Data Dictionary
12 technology, is less than \$1 million, is that right?

13 A. Is there anything that you could point to regarding the
14 Data Dictionary that you have in mind?

15 Q. Sure. Do you happen to remember your last slide, PDX 3-25?

16 MR. DE VRIES: Mr. Thomas, could we show that?

17 THE COURT: Mr. Plumpe, if you could keep your voice
18 up, that would help us a lot. Thank you.

19 THE WITNESS: Okay, sorry.

20 Q. The copyright infringement amount that you have talked
21 about is less than --

22 MR. DE VRIES: I actually think this is not the
23 current version of the slide, Mr. Thomas, if you could please
24 take this down.

25 Q. Do you recall that the number that you presented to the

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Plumpe - Cross

1 jury, if they find copyright infringement, is less than \$1
2 million?

3 A. Yes, if you look at the UHG client, the copyright
4 infringement profits of Syntel is less than a million dollars.

5 Q. You've seen evidence in this trial that Syntel advertises
6 the Data Dictionary technology to all of its clients, right?

7 A. I believe I know what you're talking about, yes.

8 Q. Now you know that Syntel tells the market about how it
9 invests in intellectual property, and specifically tools,
10 right?

11 A. I don't have a specific recollection. Is there something
12 that you could show me to give me an idea of what you're
13 talking about?

14 Q. Sure.

15 MR. DE VRIES: Mr. Thomas, please, DTX 1541.

16 Q. Do you see that this is a brochure from the Atos Syntel
17 website?

18 A. I see it looks like a brochure, I don't know where it's
19 from.

20 MR. DE VRIES: Go to page 2. Mr. Thomas, if you could
21 please blow up investing in excellence, the second bullet from
22 the bottom on the left.

23 It says: Investing in excellence. Sustained
24 investments in world class facilities, domain expertise,
25 IP-based solutions, tools and accelerators.

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Plumpe - Cross

1 Do you see that?

2 A. I do.

3 Q. Those investments in tools and accelerators, those are my
4 client's investments, right?

5 A. I don't know what in particular they're talking about here
6 and whether it's tied to trade secrets or not.

7 Q. You do agree that Syntel should not be telling the market
8 about investments in trade secrets that it didn't make, right?

9 A. I don't know what investments they may or may not have made
10 in different categories that are listed here, but if you're
11 asking me if they falsely advertised, I don't know that this is
12 a false advertising case, but I wouldn't endorse that.

13 MR. DE VRIES: You can take that down, Mr. Thomas,
14 please.

15 Q. Mr. Plumpe, you're aware that in trade secrets cases,
16 avoided costs have been awarded, right?

17 A. I'm aware of some cases that avoided costs have been
18 awarded.

19 Q. And you're also aware that under Congress' Defend Trade
20 Secrets Act, that in addition to damages for actual losses,
21 that a trade secret owner can also get unjust enrichment
22 damages, right?

23 A. Yeah, I believe unjust enrichment can be defined a number
24 of different ways, but I do have a recollection of what you're
25 talking about.

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Plumpe - Cross

1 Q. You haven't done an alternative avoided cost calculation to
2 Mr. Britven's, right?

3 A. Correct.

4 Q. Now you do say that Mr. Britven's avoided cost calculations
5 are not proportional to Syntel's profits, right?

6 A. Correct.

7 Q. But you're not aware of any rule that prohibits an avoided
8 cost calculation from exceeding the actual profits that were
9 earned by the defendant for use of trade secrets, right?

10 A. I'm not aware of any rule, I'm just trying to point out
11 what actually happened here.

12 MR. DE VRIES: Now Mr. Thomas, I would like to make
13 sure we're showing the correct slide here. PDX 3-9 should have
14 the number \$10,270,349.

15 Q. Now this was your slide, Mr. Plumpe, that showed what
16 Syntel's actual profits were from the Facets consulting
17 business, right?

18 A. This is a slide I prepared, I don't know if the jury saw
19 it.

20 Q. And what that slide says is those are the profits through
21 June 2018.

22 MR. DE VRIES: Mr. Stevenson, would you mind just
23 highlighting that for me, through June 2018 at the bottom
24 there?

25 Q. Mr. Plumpe, the profits you told the jury about were only

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Plumpe - Cross

1 through June of 2018, fair?

2 A. Correct.

3 Q. They don't include whatever profits that Syntel made on its
4 Facets consulting business for over the last two years and
5 several months. Agreed?

6 A. Yes. This ends June 2018.

7 MR. DE VRIES: If we could take that down,
8 Mr. Stevenson, and put Mr. Plumpe back up.

9 Thank you.

10 Q. But Mr. Plumpe, you know that typically expert reports
11 often are supplemented through a supplemental discovery up to
12 the date of trial, fair?

13 A. That's typical, yes.

14 Q. But you did not issue a supplemental report here, right?

15 A. That's correct.

16 Q. Syntel did not provide any updated financial data showing
17 whatever money earned since June of 2018, right?

18 A. I believe that's correct.

19 Q. So we don't have the data showing how much money Syntel has
20 made using TriZetto's trade secrets over the last two years,
21 right?

22 A. I believe we have testimony from Mr. Reddy that it's not a
23 focus of their business any longer, but I don't believe he
24 provided numbers.

25 Q. If that were accurate, would you expect Syntel to have

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Plumpe - Cross

1 provided the actual data to back that up?

2 A. I don't know, but like I said, in my experience, it's
3 typical that an update would be provided.

4 Q. Now Atos purchased Syntel in July of 2018, right?

5 A. Is that when the agreement was or is that when the
6 transaction flowed?

7 Q. My question is that's when they announced they were
8 acquiring Syntel, is that right?

9 A. That sounds more like the announcement date. I don't have
10 it particularly committed to memory, but that sounds like the
11 announcement date.

12 MR. DE VRIES: Please pull up DTX 1546. Sorry, we'll
13 come back to that, just in the interest of time.

14 Q. Coincidentally, July 2018 is when Syntel stopped providing
15 us with its financial data, right?

16 A. I will agree with you regarding the time, yes. June 2018
17 was the latest data produced in this litigation. Our work was
18 in the fall of 2018, so that's kind of typical.

19 Q. Actually what you said a moment ago is it's typical to
20 issue a supplement with the data up to the time of trial,
21 right?

22 A. Yes, that would be typical.

23 MR. DE VRIES: Now Mr. Thomas, could we please show
24 DTX 1546.

25 Q. Mr. Plumpe, this is another brochure from the Atos Syntel

KAQTSYN2

Plumpe - Cross

1 website, right?

2 A. Could you -- are there multiple pages of this? I don't
3 know if it's from the website or not.

4 Q. Fair enough. This is an Atos Syntel brochure, right?

5 A. It looks to be, yeah.

6 MR. DE VRIES: Could we go to page 2, Mr. Thomas, and
7 could you blow up the: Why us?

8 Q. What Atos Syntel says is "largest third-party Facets
9 service provider." Is that what it says?

10 A. It does say that. What was the date on this again?

11 MR. DE VRIES: Blow it out.

12 Q. It was from the website I think two days ago, I don't know
13 if the date is on here.

14 A. Okay.

15 Q. And then if we could --

16 MR. DE VRIES: You can take that down Mr. Thomas.

17 There's a bullet -- sorry, you can keep that page up,
18 thank you.

19 Q. There's a bullet in the middle just to the right of the
20 words "Why us," projects for 35 plus health plans serving
21 approximately 60 million members. Do you see that?

22 A. I do. I'm wondering what it says right above it because
23 that's blocked right now.

24 MR. DE VRIES: Show that, Mr. Thomas.

25 Q. I think it says, "As the leading third provider of Facets

KAQTSYN2

Plumpe - Cross

1 services, Atos Syntel combines 1,500 plus person years of
2 Facets experience with specialized infrastructure and testing
3 skills to help you seamlessly handle multiple releases and
4 reduce your overall operations cost. Our Facets experience
5 includes," and then it says "projects for 35 plus health plans
6 serving approximately 60 million members."

7 Do you see that?

8 A. Okay. I see what you're saying.

9 MR. DE VRIES: Okay. Take that down now, Mr. Thomas,
10 please.

11 Q. Now Mr. Plumpe, in your opinion, the Cognizant \$2.7 billion
12 acquisition of TriZetto is a third-party transaction which the
13 allegedly misappropriated assets were presumably transferred.
14 Fair?

15 A. Yes, I believe that's a good characterization of what
16 happened.

17 Q. And assuming that we're right, that Syntel took the trade
18 secrets from my client, Atos' acquisition of Syntel also
19 transferred misappropriated assets, right?

20 A. Atos' acquisition -- you're saying if Syntel had
21 misappropriated trade secrets and those were transferred to
22 Atos?

23 Q. Yes. Well, let me ask it this way, if it helps.

24 MR. DE VRIES: Please put up DTX 1543, Mr. Thomas.

25 Q. You'll see that DTX 1543 is announcement from Atos and

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Plumpe - Cross

1 Syntel about Atos' acquisition of Syntel, and the date of the
2 announcement is July 22nd, 2018. Do you see that?

3 A. Yes, I do.

4 Q. And you see the first bullet below that in the middle that
5 begins Atos and Syntel have entered into a definitive merger
6 agreement under which Atos will acquire Syntel for cash
7 consideration of C \$3.4 billion. Do you see that?

8 A. I do. Although, Mr. Thomas, could he put that down a
9 little bit. It's blocked by one of my Zoom windows.

10 Thank you.

11 Q. Can you see now where it says that Atos had decided to
12 purchase Syntel for \$3.4 billion?

13 A. Yes, I see that.

14 MR. DE VRIES: And if we could now, Mr. Thomas, show
15 page 3.

16 Q. There is a quote from Bharat Desai, co-chairman and
17 co-founder of Syntel. Do you see that?

18 A. I do.

19 MR. DE VRIES: If you could please blow up the
20 paragraph beginning, "Our focus at Syntel."

21 Q. What Mr. Desai from Syntel says, in connection with the
22 \$3.4 billion acquisition, is that our focus at Syntel is to
23 help customers transform and succeed in the digital economy.
24 Since its founding, our customer-for-life ethos has guided our
25 investments in high-impact, domain-led services and

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Plumpe - Cross

1 intellectual property. Do you see that?

2 A. Part of it, again, is blocked by the Zoom window. If you
3 could lower that.

4 Q. Can you see it now, Mr. Plumpe?

5 A. Yes, sir.

6 Q. When he says "our investments in intellectual property,"
7 those are TriZetto's investments, right?

8 A. I don't have any reason to agree with you on that. There's
9 no specifics about what that is. There was a \$3.4 billion
10 asset, so the Facets consulting business was only doing about 6
11 or \$7 million a year in revenue, so he could very well be
12 talking about other investments that have nothing to do with
13 the Facets consulting business.

14 Q. And I showed you a document a moment ago also referring to
15 Syntel's investments where it specifically referred to tools
16 and accelerators, didn't I?

17 A. I recall that, yes.

18 Q. Now you have seen evidence in the trial that actual Facets
19 development took decades and over \$500 million, right?

20 A. I don't know if I have seen that. We heard that testimony,
21 but I don't know if I have seen anything to back that up.

22 Q. Over \$500 million is hundreds of millions dollars more than
23 \$284 million. Do you agree about that?

24 A. That simple math, I would agree with that.

25 Q. You agree that Syntel advertises itself as the leading

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Plumpe - Cross

1 third-party Facets service provider, right?

2 A. Well, that document you showed me is from 2018, and it's
3 not specific about what they're saying that they're doing, so
4 I'm not exactly sure that it is tied to the trade secret
5 misappropriation.

6 Q. What you do know is that Syntel sells competing Facets
7 services using tools, right?

8 A. They have historically. I know it's been smaller and part
9 of the business doesn't have much focus on the management.

10 Q. And you recall that you showed the Duff & Phelps report in
11 Exhibit 29.4 in PTX 846 where you showed what the amount of
12 Facets service revenue was that TriZetto earned in 2014, and it
13 was about \$150 million that year. Do you recall that?

14 A. That was the consulting, which is one of the three
15 different types of services that TriZetto was offering at this
16 time.

17 Q. And that same document, that same exhibit that you showed
18 the jury showed that TriZetto anticipated making over \$500
19 million a year in consulting services in 2019 alone, fair?

20 A. I don't recall, but that would have been like a merged
21 Cognizant-TriZetto Group kind of projection, that wouldn't just
22 be TriZetto standing alone.

23 Q. Now you agree that it's appropriate to consider the amount
24 that the defendant expected to earn from use of IP when
25 calculating damages, right?

KAQTSYN2

Plumpe - Cross

1 A. Could you be more specific, please?

2 Q. Sure. You agree that if the record in a trade secret case
3 where you're calculating avoided costs includes things like
4 internal aspirational projections that can be considered,
5 right?

6 A. I'm not sure I'm following you with avoided costs and
7 someone's aspirations. I'm not sure I'm following you.

8 MR. DE VRIES: Mr. Thomas, let's please take a look at
9 page 58 of Mr. Plumpe's deposition, line 8 through 59 line 2.

10 Q. I asked you:

11 "Q. In calculating avoided cost as a monetary remedy, do you
12 believe it is appropriate to consider the amount the defendant
13 expected to earn from use of the IP in addition to considering
14 potentially other factors?

15 "A. So my -- my testimony is the same. You can consider
16 everything in the record.

17 "Q. Including what amount the defendant expected to earn from
18 use of the IP?

19 "A. If the record in a trade secret case where you're
20 calculating avoided cost includes things like internal
21 aspirational projections, that can be considered. If it
22 includes actual data, you consider that, too. You consider the
23 totality of the record."

24 Was that your testimony?

25 A. Yes.

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Plumpe - Redirect

1 MR. DE VRIES: Mr. Thomas, could we show DTX 83 at
2 page 2.

3 Q. In 2012, when Syntel came up with a plan to take the trade
4 secrets, they thought the total addressable market was \$500
5 million, right?

6 A. I recall Mr. Reddy talking about this and having some doubt
7 regarding the numbers, and I don't recall what the 500 million
8 was for, but it clearly is not the Facets consulting market
9 that Syntel had anticipated.

10 MR. DE VRIES: Mr. Thomas, let's put up PTX 189 at
11 page 9.

12 Q. In 2014, right before it was prepared to launch its all-out
13 war against my client, it was looking at a billion dollar goal,
14 that's what Syntel was looking at, right?

15 A. Looking down at the bottom, yes. It didn't define what the
16 billion dollar goal is, what the scope of that is.

17 MR. DE VRIES: Thank you, Mr. Plumpe, no further
18 questions.

19 REDIRECT EXAMINATION

20 BY MS. JANGHORBANI:

21 Q. I only have one question for you, Mr. Plumpe. Mr. De Vries
22 just asked you about the service revenue that we looked at in
23 the Duff & Phelps report. Do you recall that?

24 A. Yes.

25 MS. JANGHORBANI: Let's take a look at that, it's PTX

KAQTSYN2

Plumpe - Redirect

1 846 at Exhibit 29.4, page 152, Mr. Stevenson.

2 Q. He was asking you about the total revenue that you
3 testified about, that \$150 million per year number. Do you
4 recall that?

5 A. That was the full year 2014 of TriZetto's consulting
6 revenues across the entire payer reporting, not just that.

7 Q. That's what I was going to ask you. Is that attributable
8 only to Facets or is that more than Facets?

9 A. No, it's much more than Facets, it's QNXT and other major
10 platforms that TriZetto offers as product-related services to
11 the payer industry.

12 MS. JANGHORBANI: Thank you, Mr. Plumpe, I have no
13 further questions.

14 THE COURT: Mr. Plumpe, thank you very much, you are
15 excused.

16 THE WITNESS: Thank you, your Honor.

17 THE COURT: Does Syntel have another witness?

18 MR. GROOMBRIDGE: We do, your Honor, Mr. Glenn Sheets.
19 And my colleague, Ms. Parker, will be presenting Mr. Sheets.

20 THE COURT: Great. Hello, Ms. Parker.

21 MS. PARKER: Hello.

22 May Mr. Sheets approach the witness stand?

23 THE COURT: Please.

24 (Continued on next page)

KAQTSYN2

Sheets - Direct

1 GLENN SHEETS,

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. PARKER:

5 MS. PARKER: Mr. Stevenson, if we could please put
6 Plaintiff's Demonstrative 4 on the slide.

7 Q. Good morning, Mr. Sheets.

8 A. Good morning.

9 Q. Could you please introduce yourself to the jury.

10 A. Yes. As I just previously testified, my name is Glenn
11 Sheets, S-H-E-E-T-S, and I'm here to give opinions on my
12 evaluation of the economic harm or benefit realized by the
13 parties in this matter.

14 Q. And Mr. Sheets, have you prepared some slides to help aid
15 in your testimony today?

16 A. Yes.

17 Q. Do we see those on the screen?

18 A. I see, yes, direct examination of Glenn C. Sheets.

19 MS. PARKER: If we could move to slide 2,
20 Mr. Stevenson.

21 A. Sorry, I didn't hear.

22 Q. Mr. Stevenson, will put the slide 2 on the screen?

23 A. Thank you. Can you hear me okay?

24 Q. I can, yes.

25 A. Great.

KAQTSYN2

Sheets - Direct

1 Q. Mr. Sheets, where do you work?

2 A. I work with the consulting firm now known as Stout. I'm a
3 managing director for that firm. We have approximately 450 to
4 500 professionals around the world who provide consultations in
5 a variety of different business and individual situations, some
6 of which deal with quantifying the economic damages in disputes
7 between parties. And I have been providing 30 years of
8 assessing damages over my career that started back in the early
9 '80s.

10 Q. And can you tell us a little bit about your educational
11 background, please?

12 A. Yes, I graduated in the early '80s from the University of
13 California in Santa Barbara, and there I obtained a business
14 economics degree concentrating in accounting which allowed me
15 to subsequently sit for the CPA exam and become a Certified
16 Public Accountant.

17 Q. And can you talk to us a little bit about what you did
18 after you graduated from college?

19 A. Yes, I went to work immediately out of college with a
20 regional accounting firm in the southeastern Michigan area.
21 And there, coming out of school, I learned everything about
22 companies from preparing financial statements, tax returns, and
23 then ultimately over a twelve-year period while I was employed
24 by that firm, became a lead consultant for businesses to get
25 into business to help them operate their businesses more

KAQTSYN2

Sheets - Direct

1 profitably and how to exit a business, whether it was by sale
2 of that business or by a wind down of that business.

3 Q. And what did you do next?

4 A. After that I was hired by one of the large national
5 accounting firms by the name of Coopers & Lybrand. And there I
6 was the director of litigation advisory services for the
7 Michigan and Ohio market where I essentially took all my skill
8 sets and experience, knowledge that I gained over my first
9 twelve years of my professional career, and started focusing on
10 working with parties in disputes to help them understand the
11 economic impact that might be raised from that dispute.

12 THE COURT: I'm going to interrupt for just a second.
13 I'm told that we lost the Zoom feed, so we need about 30
14 seconds to reconnect. Apologies.

15 (Pause)

16 THE COURT: You may proceed.

17 MS. PARKER: Thank you.

18 BY MS. PARKER:

19 Q. Mr. Sheets, what did you do after you left Coopers &
20 Lybrand?

21 A. From there I joined the existing firm I'm at today, that
22 would be the mid to late '90s I joined Stout, and I was a
23 managing director overseeing the litigation consulting business
24 where I focus on a variety of matters across the globe,
25 actually, testifying in matters both in federal, state courts

KAQTSYN2

Sheets - Direct

1 and private arbitrations or international arbitrations. And my
2 focus is primarily working with the parties in the disputes as
3 well as their legal counsel to help assess the economic impact
4 that may be present in any one of those cases.

5 MS. PARKER: Thank you. Mr. Stevenson, if we could
6 put up slide 3, please.

7 Q. Mr. Sheets, briefly, could you tell us if you're a member
8 of any professional organizations?

9 A. Yes. The two primary memberships which a Certified Public
10 Accountant belong to would be the national society, so the
11 American Institute of Public Accountants. That governs our
12 professional conduct and provides us with much of the guides
13 and guidance on how to provide services from a public
14 accounting perspective. And then the state societies are often
15 one where a CPA would be involved. I'm one of the members of
16 Michigan Association of Certified Public Accountants and a
17 former chairman of the business valuation and litigation task
18 force, which at that time was essentially the committee that
19 was providing the technical guidance and practical guidance to
20 CPAs throughout Michigan that were looking to follow a similar
21 path that I and colleagues on my task force had provided
22 through our professional career.

23 Q. Do you have professional designations?

24 A. I do. You'll see there are four of them on the slide here.
25 All of these professional designations I either earned through

KAQTSYN2

Sheets - Direct

1 taking testing, having the minimum required experience levels,
2 and all of these support my various dispute situations, allows
3 me to bring a variety of learned experiences and formal
4 education and training to allow me to assess the economic
5 impact of the parties in disputes like this.

6 MS. PARKER: If we could put up slide 4, please,
7 Mr. Stevenson.

8 Q. Mr. Sheets, the jury has heard testimony from Mr. Britven
9 and Mr. Plumpe regarding TriZetto's damages claims in this case
10 against Syntel. As part of your work in this case, did you
11 perform any analysis of TriZetto's damages claims in this case?

12 A. I want to make sure I understood your question. Damages,
13 Syntel's damages claims?

14 Q. No, sorry, let me try again. Mr. Britven and Mr. Plumpe
15 offered testimony in this case about TriZetto's claims of
16 damages against Syntel. Were looking at those claims any part
17 of your work in this case?

18 A. No, they were not.

19 Q. Can you explain what damages were you asked to look at in
20 this case?

21 A. Syntel has claimed that it has suffered an economic damage
22 or that the defendants have realized an unjust enrichment due
23 to the hiring of 84 specific employees that were hired from
24 Syntel by the defendants shortly after the termination or at
25 least announcement that they were no longer going to provide --

KAQTSYN2

Sheets - Direct

1 work with the defendants in the contract, I think it's the MSA.

2 Q. And we see on your slide here it says two measurements,

3 Syntel's lost profits, defendant's unjust enrichment. Are

4 those two calculations you did in this case?

5 A. I did. I looked at both from the perspective of what did

6 Syntel lose associated to having 84 employees hired by the

7 defendants over the time period up to date of trial, and then

8 also looked at it from the perspective of what type of benefit

9 did the defendants realize from hiring the 84 employees and

10 hold them until this date of trial.

11 (Continued on next page)

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Kaq3syn3

Sheets - Direct

1 Q. I want to take a look at those one a time. If we can put
2 up slide five, Mr. Stevenson. Mr. Sheets, what if any
3 conclusion did you reach regarding Syntel's lost profits in
4 this case from the loss their 84 employees?

5 A. Yes, identifying that the appropriate measure of damages
6 for the losing -- of the economic impact for losing 84
7 employees to the defendants, Syntel's lost profits were
8 14,793,042.

9 Q. If we can put up slide six, Mr. Stevenson.

10 Mr. Sheets, the jury has heard some testimony in this
11 case regarding the concept of lost profits already. When we're
12 talking about lost profits in the context of your analysis, can
13 you explain to us what are we talking about?

14 A. Yes, essentially lost profits is a result of looking at
15 what lost revenue streams are identified to the actions or the
16 claims by the parties, and then applying the appropriate
17 revenue and subtracting the cost or multiplying by a margin. I
18 think the jury saw that slide as I was in the back of the
19 courthouse. And in this, my analysis here, is looking at the
20 impact the economic impact to 84 specific employees, so I'm
21 looking at what was the lost revenue and what was ultimately
22 lost profit associated to those employed individuals.

23 Q. I'd like to take a look at how you reach that. If we can
24 put up slide seven.

25 Mr. Sheets, can you walk us through what was the first

Kaq3syn3

Sheets - Direct

1 step you took in identifying or calculating Syntel's lost
2 profits from the loss of its 84 employees?

3 A. Yes, there was, well, there was a number of documents that
4 I reviewed in coming to my opinions, one of which was a
5 document where Cognizant acknowledged that it had hired 84
6 people from Syntel. Those are the 84 that I identified. So
7 starting with how many were hired, and who was hired. I next
8 then was able to understand when they were hired by Syntel,
9 when they were previously employed by Syntel, and when they
10 left Syntel. And ultimately, I also had information to allow
11 me to understand when they were hired by the defendants, and if
12 or when they might have left the employ.

13 Q. If we can take a look at slide eight. Mr. Sheets, you
14 mentioned a moment ago you had information from the parties
15 regarding when employees left Syntel and when employees started
16 at Cognizant. Can you explain to us what we are looking at on
17 this slide?

18 A. Yes. This is two subsets of the information that I
19 reviewed. I believe they've been identified by Bates number at
20 the corner of the background documents.

21 Essentially you can see where I've lined up the
22 employees both on Syntel's records which is at the top band
23 that's being shown. And those that are in the Trizetto or the
24 defendant's records that were provided that shows that same
25 individual, when they started, which was in this case shortly a

Kaq3syn3

Sheets - Direct

1 few days after they were terminated from Syntel or left
2 Syntel's employ.

3 Q. So for each of the 84 employees in your analysis, did you
4 have a confirmed start date for Cognizant for each of those
5 employees?

6 A. Yes, both a confirmed start date and I think 10 of the 84
7 people, confirmed termination date.

8 Q. We'll talk about that in just a minute.

9 Mr. Stevenson, if you can go back to slide seven.

10 Mr. Sheets, once you identified the employees at issue
11 and the date they left Syntel, what did you do next in your
12 analysis?

13 A. So, once I was able to identify the number of employees and
14 when they were -- and when they left Syntel and were employed
15 by the defendants, I then computed what was the average hours
16 billed per year for each of those individuals. Because it is a
17 group of individuals, my calculations is basically looking at
18 them in aggregate.

19 Q. How did you decide what hours number to use for your
20 analysis?

21 A. Well, I had several interviews with the management of
22 Syntel, both of whom testified in this matter that I was
23 watching remotely, Mr. Reddy and Mr. Mehta. And with my
24 interviews with them, I made inquiries as to how many average
25 billable hours per year these employees on average would bill.

KaQ3syn3

Sheets - Direct

1 And he said it was roughly 2,088 was kind of their minimum
2 expectations, but their people were busy and generally working
3 more than that.

4 Q. What number did you use for your analysis for average hours
5 billed?

6 A. I used the 2,088 hours a year being a conservative estimate
7 of the minimum expectation, as opposed to what they might have
8 worked in addition to that.

9 Q. So once you had the identified employees and the average
10 hours they would bill, what did you do next?

11 A. From a business economics perspective, and looking at
12 damages, there is a term used called attrition. When you look
13 at a base of activity, whether it's employees or it's
14 customers, if you were to stop that pool of employees at that
15 time, just focus on them, how many over time might have left in
16 this case Syntel for other reasons, they would have left for
17 other opportunities or other reasons. So we call that
18 attrition.

19 So I can calculate that by looking historically at
20 what Syntel's attrition rate was. And essentially it was
21 20 percent of their employees on average, not specific to these
22 84, but 20 percent of their employees on average would leave
23 over time.

24 Q. Once you had your employees, the hours, and you accounted
25 for the leaving in the regular course of employees, what did

KaQ3syn3

Sheets - Direct

1 you do next in your calculation?

2 A. Then I was provided information that allowed me to figure
3 out how much Syntel was charging their customers for these
4 specific employees. And so with that I was able compute number
5 of employees, times the hours they would expect to work a year,
6 less the number of people that might leave throughout that
7 year, times the rate that they would bill to their customers
8 and ultimately receive in cash when the client paid them, and
9 that gives me revenue for those 84 individuals.

10 Q. I see at the bottom of your slide a green box that says
11 total revenue \$21,312,426. What does total revenue mean here?

12 A. Total revenue would be looking over the time period of
13 essentially the end of 2014, when the first hires were made by
14 the defendants, taken from Syntel, up through the date of this
15 trial. Considering attrition, that would be the total amount
16 of revenue, which would convert, if they were paid by their
17 clients into cash that they would have available to them over
18 that little over six-year period.

19 Q. Does that total revenue represent Syntel's lost profits for
20 these 84 employees?

21 A. No, and I think Mr. Plumpe had put on the screen a graphic
22 that showed how you compute lost profits. This is revenue
23 before you either subtract costs or multiply it by what's
24 called a margin percentage.

25 Q. Did you take that next step to account for costs or margin

Kaq3syn3

Sheets - Direct

1 in this revenue number?

2 A. I did.

3 Q. If we can put up slide nine, please, Mr. Stevenson.

4 The first bullet here we see apply Syntel's lost gross
5 margin. Can you explain what you did in this step of your
6 calculation?

7 A. Yes, I was provided a variety of financial information on
8 Syntel's healthcare and life sciences group, which is where
9 these 84 individuals were reporting through. That business
10 unit. And I saw that over a number of their clients and over a
11 number of years that the average margin was approximately
12 43.8 percent of revenue.

13 So because I observed from their financial records
14 that the gross margin percentage was 43.8 percent, I could
15 multiply that by the revenue that you showed me earlier which
16 is just over 21 million, and that result is \$9,341 -- I'm
17 sorry. \$9,341,697.

18 Q. Mr. Sheets, can you talk to us what you did once you
19 calculated that \$9 million number.

20 A. I'm measuring the economic loss to Syntel. So you would
21 expect that as, over this six-year period, as Syntel's clients
22 are paying them cash, Syntel would have received that cash,
23 those lost profits, and they would have invested them into
24 their business like all businesses would. Businesses take the
25 money that they make from their clients, they reinvest it into

Kaq3syn3

Sheets - Direct

1 their business. That allows them to grow. That's a rate of
2 return or a rate on your investment. And I went to the
3 industry average type of returns of about 14 percent a year. I
4 used a financial calculation then to bring that up to what
5 those economic damages have been to Syntel as of the date of
6 this trial. That would be 14,793,042.

7 Q. If we can put up slide 10, Mr. Stevenson.

8 So Mr. Sheets, just to sort tie up your first
9 calculation, can you just tell us, what were the lost profits
10 to Syntel that you calculated for the loss of these 84
11 employees?

12 A. Over the damage period that they were impacted, which is up
13 through trial today, it would be just under \$15 million.

14 Q. If we can go to slide 11, Mr. Stevenson.

15 Mr. Sheets, the jury has heard some testimony in this
16 case on Thursday and again briefly this morning about
17 Cognizant's hiring of five specific employees with
18 non-solicitation or non-competition clauses in their contracts.

19 Did you perform any analysis regarding the lost
20 profits to Syntel from those five employees?

21 A. Yes, since those five are just a subset of the 84, I
22 used -- I subtracted everyone else but the five, I did the
23 exact same calculations, and that resulted in a total lost
24 profits for those five individuals of 1,239,256.

25 Q. Mr. Stevenson, if we can go to slide 12, please.

KaQ3syn3

Sheets - Direct

1 Mr. Sheets, I want to move now and talk about the
2 second analysis that you did which you told us which was
3 defendant's unjust enrichment. Can you tell us what number you
4 calculated?

5 A. Yes, for the benefit realized by the defendants for hiring
6 84 people over the same period of time, up through the date of
7 trial, I calculated a benefit or an unjust enrichment of the
8 defendants of \$19,039,998.

9 Q. If we can go to slide 14, please, Mr. Stevenson.

10 Mr. Sheets, how did you go about calculating benefit
11 to defendants from hiring these 84 individuals?

12 A. It was a very similar analysis that I did in lost profits,
13 but rather than focusing in on what the impact was to Syntel,
14 I'm looking at what the financial benefit most likely realized
15 by the defendants. So I started with the number of people that
16 were hired by the defendants, I knew their start date. I think
17 I've already testified that 10 out of the 84 had terminated
18 their employment with the defendants over a six-year period,
19 but that left 74 people still employed, at least as of the last
20 information that was provided by the defendants.

21 I then used the rate per hours that they were doing at
22 Syntel, because they were busy and I understand that's the type
23 of work that they provided. And then I multiplied that by the
24 billing rate. In this case I had to use Syntel's billing
25 rates, because I was not given anything from the defendants

Kaq3syn3

Sheets - Direct

1 that would support the billable rates themselves, so I'm sure
2 that's conservative, but I expect if they hired these people
3 they probably gave them pay raises and stuff. But I used the
4 more conservative number.

5 Q. As a result of that calculation, what total revenue did you
6 calculate for defendants for the hiring of these 84 employees?

7 A. For the same approximately six-year period up to the date
8 of trial, the revenue that the defendants realized on these 84
9 people, understanding 10 of them attritted or left over the
10 six-year time period, is \$39,776,782.

11 Q. Does that number represent the unjust benefit to defendants
12 from hiring these employees?

13 A. That's the revenue, not what I would expect to be the net
14 benefit.

15 Q. Did you take those factors into account in your analysis?

16 A. I did.

17 Q. Mr. Stevenson, if we can put up slide 15, please.

18 Mr. Sheets, can you talk to us about applying
19 TriZetto's gross margin here in your analysis?

20 A. Yes. I was ultimately provided financial information from
21 TriZetto that showed that their gross margin on these types of
22 services where these employees would expect to have worked was
23 32.1 percent of revenue. So I just calculated that by doing
24 the multiplication. Multiplied the 32.1 percent by the over
25 \$30 million number I testified earlier, giving me 12,768,347.

Kaq3syn3

Sheets - Cross

1 Q. What, if anything, did you do in your analysis to adjust
2 for that number up to the time of trial?

3 A. Very similar approach with Syntel. The defendants would
4 have realized, ultimately their customers would have paid them
5 in cash for the services these employees were providing on
6 behalf of the defendants, and that they would reinvest that
7 into their company. That would grow up through the date of
8 this trial, which would be in the amount of \$19,039,998.

9 Q. Mr. Stevenson, if we can put up slide 17, please.

10 So, Mr. Sheets in conclusion, what was your final
11 conclusion regarding the lost profits to Syntel from losing
12 these 84 employees?

13 A. Yes. Looking at it from the perspective of what did Syntel
14 lose or what was the detriment to them for having these 84
15 employees hired, it was just under \$15 million.

16 Q. With respect to defendant's unjust enrichment from hiring
17 those 84 employees, what, if anything, conclusion did you
18 reach?

19 A. As I just previously testified, the expected realization of
20 profits from the hiring of 84 people by the defendants would be
21 just over \$19 million.

22 MS. PARKER: Thank you, Mr. Sheets. I have no further
23 questions.

24 CROSS-EXAMINATION

25 BY MS. CARSON:

Kaq3syn3

Sheets - Cross

1 Q. Good morning, Mr. Sheets. My name is Pat Carson. I am
2 just going to ask you a few questions and I'm going to do my
3 best to make these yes-or-no answers, because I'm very short on
4 time, and I really appreciate it if you would try to answer the
5 questions as yes or no. Okay?

6 A. I'll do my best.

7 Q. Now, you've talked about the 84 employees that you contend
8 that TriZetto hired away from Syntel. And do you understand
9 that her Honor has already determined that it was not a
10 violation of the Master Services Agreement for TriZetto to hire
11 employees from Syntel, correct?

12 A. I'm not sure if I'm able to give an answer on
13 interpretations of either court rulings or pleadings. My
14 understanding is that the claims that I was preparing were in
15 relationship to the confidential information. I don't know how
16 that plays in with the MSA.

17 Q. So you're just here to talk about Syntel's claim that
18 TriZetto used information such as employees' names, their phone
19 numbers, and their salary information, information like that,
20 that Syntel claims is confidential in order to hire those
21 employees, correct?

22 A. I believe that's correct. I think there's more factors
23 than what you listed, but generally, yes.

24 Q. Because I am short on time, I want to just move to your
25 calculations of unjust enrichment. But before I do that, just

Kaq3syn3

Sheets - Cross

1 to be clear, you're not issuing any opinions about whether or
2 not TriZetto actually used any confidential information,
3 correct?

4 A. That's correct.

5 Q. So you're just here to do calculations for the jury?

6 A. Under the premises this jury will find the defendants
7 liable for inappropriate hiring of 84 people.

8 Q. So let's talk about your calculations on unjust enrichment.
9 You agree that unjust enrichment damages are not limited to the
10 amount of profits that are lost, correct?

11 A. I believe you would look at all the economic inputs and
12 they may not be limited by that, correct.

13 Q. And in your expert report, you stated that a component of
14 unjust enrichment is costs saved, correct?

15 A. Yes, one would consider the costs saved by somebody's
16 inappropriate actions to hire.

17 Q. And costs saved are the same thing as avoided costs,
18 correct?

19 A. Yes.

20 Q. So, you say that Syntel lost almost \$14.8 million due to
21 losing 84 employees, correct?

22 A. Correct.

23 Q. And did you hear Mr. Reddy's testimony that he personally
24 is responsible for overseeing 28,000 employees?

25 A. I believe he said that. But again, that was in the context

Kaq3syn3

Sheets - Cross

1 of the Syntel's entire business. And this was, these
2 individuals were working in the healthcare and life sciences
3 division, which was a smaller aspect of that.

4 Q. But, you just testified that there was a 20 percent
5 attrition rate at Syntel, and that just means employees leaving
6 for reasons that have nothing to do or don't necessarily have
7 anything to do with TriZetto, correct?

8 A. I believe that's correct. It is a 20 percent annual
9 attrition rate. That was based upon their historical review of
10 the attrition factor, beginning number of employees, those who
11 left at the end of any one year.

12 Q. So for example --

13 A. I'm sorry. Just to -- I didn't finish my answer. I'm
14 sorry.

15 And the information that I relied upon was specific to
16 the healthcare and life sciences business unit. Not the entire
17 company as a whole.

18 Q. But let's just say, taking that 20 percent on those 28,000
19 employees that Mr. Reddy says he's in charge of. That would be
20 5,600 employees per year that just leave Syntel for various
21 reasons, correct?

22 A. Well, I don't think I can answer that because I had just
23 testified that the information I was looking at for the
24 20 percent was limited to the healthcare and life sciences
25 group.

Kaq3syn3

Sheets - Cross

1 Q. I am asking you to do the math, Mr. Sheets. If you take
2 20 percent of 28,000, how many employees is that?

3 A. That would be I think 5600.

4 Q. 5,600 employees?

5 A. In the context that that's not -- that's applying a
6 20 percent factor that is limited to a fraction of those number
7 of employees.

8 Q. I want to go back to avoided costs. You know that Syntel
9 actually estimated the costs to replace those 84 hires,
10 correct?

11 A. I understand there was an analysis to appreciate or to kind
12 of measure what the damage was associated to the 84 or number
13 of employees leaving. I don't think it was specific to the
14 replacement. As I understand these were never replaced.

15 Q. Mr. Thomas, if we can have PTX 5.

16 This is a document that you relied on in making your
17 calculations, correct?

18 A. Based upon the first sheet, yes. I'd have to look at the
19 rest of it, but that does appear familiar.

20 Q. And the title of this document is "cost per hire employee
21 replacement cost." Correct?

22 A. That's the title, yes. The context of what's behind it may
23 differ, but I agree with that's what it says.

24 MS. CARSON: Mr. Thomas, if we can have from
25 Mr. Sheets' supplemental report Exhibit E2, schedule 2, PDF

KaQ3syn3

Sheets - Cross

1 page 80, please.

2 Q. While Mr. Thomas is pulling this up, in E2 schedule 2 to
3 your expert report, you showed that applying Syntel's own
4 numbers, it would have cost them \$2.5 million in dollars of
5 2014 to replace those 84 employees, correct?

6 A. I'm sorry. Would you repeat that?

7 Q. Looking at the appendix that you put on your supplemental
8 expert report, and using the document that I just showed you
9 from Syntel calculating the cost of replacing employees, you
10 calculated that it would be \$2.5 million for Syntel to replace
11 those 84 employees in 2014, correct?

12 A. You know, I don't recall. I did make a calculation, I
13 don't recall the number. If you could show me the appendix fee
14 schedule, that would allow me to verify that number.

15 Q. Just while Mr. Thomas is finding that schedule. I believe
16 you doubled that number, whatever the number was, you doubled
17 the number from 2014 to today.

18 Why did you do that? Was that for time, the time
19 money, the value of the time?

20 A. Yes, I think conceptually over the damage period, that
21 would have been moneys not spent by the defendants, and so that
22 would be cash available to invest in their company, and that
23 would have a return up through today. I don't remember if it
24 was double, but it was -- I applied that calculation.

25 Q. So assuming you said \$2.5 million in 2014, if you took into

Kaq3syn3

Sheets - Cross

1 account the value of the, time then it would become double in
2 today's numbers.

3 A. I think I've already testified I can't remember if it was
4 exactly double. The 5 million approximate number does ring a
5 bell.

6 Q. So it doesn't appear that I am going to be getting your
7 exhibit in the time that I have. So, I think that what I'd
8 like to do is just finish up with one last question.

9 I want to go back to the claim that you're here to
10 talk about, and that is that TriZetto hired away 84 employees
11 from Syntel using what Syntel claims is confidential
12 information like their phone numbers and their current
13 salaries, correct?

14 A. I think I answered that question earlier in court today. I
15 don't know that there was many more factors that Syntel is
16 considering confidential, but from the context of my
17 understanding is that the calculations are made are relevant to
18 the 84 individuals being hired inappropriately by the
19 defendants.

20 Q. In your view, for those 84 employees, TriZetto should pay
21 anywhere from 15 to \$19 million, correct?

22 A. Yes, based upon the types of margins and the reinvestment
23 of the cash proceeds, yes.

24 Q. Mr. Plumpe's opinion in this case is that for
25 misappropriation of 104 trade secrets that represented over

Kaq3syn3

Sheets - Redirect

1 \$500 million, and two decades of research, my client should
2 only get \$4 million, correct?

3 A. I have no opinions on that aspect of this case.

4 MS. CARSON: Thank you, Mr. Sheets.

5 THE COURT: Any redirect?

6 MS. PARKER: Very briefly, your Honor.

7 REDIRECT EXAMINATION

8 BY MS. PARKER:

9 Q. Mr. Sheets, just a few brief questions. During your
10 cross-examination, counsel asked you about a PowerPoint that
11 you looked at that related to costs of hiring employees. Do
12 you recall that?

13 A. Yes, it is an analysis that when I reviewed as well as
14 discussed with management was an attempt to capture what the
15 entire organization, or at least what the healthcare and life
16 sciences division, what their kind of average costs per person
17 might be if they did have to replace somebody.

18 Q. As part of your analysis and in speaking with management
19 and looking at that presentation, did you have an understanding
20 as to whether or not Syntel was actually able to hire the
21 employees if they would have paid those costs?

22 A. Well, they weren't able to, from my discussions, and I
23 think there was testimony given to this jury that they said it
24 was an extremely difficult time, demand was rising, there was a
25 surge of hiring by the defendants, so there weren't available

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1 candidates. So I understand that's going to be the position
2 that this jury will consider.

3 Q. So if it were suggested that Syntel could have avoided the
4 lost profits by simply paying \$5 million to hire those
5 employees, would you agree or disagree?

6 A. Disagree. That would be a hypothetical. Based on my
7 discussions and the testimony, I think it's clear they did not.

8 MS. PARKER: Thank you, Mr. Sheets. No further
9 questions.

10 THE COURT: Thank you. You may be excused. Although
11 I think Mr. Street will give you something to wipe down the
12 booth.

13 (Witness excused)

14 THE COURT: Syntel, do you have any other witnesses?

15 MR. GROOMBRIDGE: We have no further witnesses. There
16 is one remaining matter that we probably need to take up with
17 your Honor before we rest. However your Honor prefers to do
18 that is fine. We would be happy to wait on that if TriZetto
19 wishes to call their rebuttal witness now.

20 THE COURT: Does TriZetto have any rebuttal witnesses?

21 MR. DE VRIES: Just one brief rebuttal witness, your
22 Honor.

23 THE COURT: Okay. Let's go ahead and do that.

24 MR. DE VRIES: Your Honor --

25 THE COURT: With five minutes for the booth.

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Britven - Direct

1 MR. DE VRIES: We'll note for the record that we have
2 Rule 50(a) motions relating to the parties' claims.

3 THE COURT: I will reserve on those. I think they
4 haven't yet rested, so you might want to repeat it again when
5 they do.

6 MR. DE VRIES: Yes, your Honor. I will.

7 MS. CARSON: Your Honor, does the witness booth need
8 to rest?

9 THE COURT: Sadly, yes. Three more minutes.

10 Mr. De Vries, do you want to call your rebuttal
11 witness?

12 MR. DE VRIES: Yes, your Honor. In rebuttal we call
13 Mr. Thomas Britven.

14 (Witness sworn)

15 THE DEPUTY CLERK: State and spell your first and last
16 name for the record.

17 THE WITNESS: Thomas Britven, B-R-I-T-V-E-N.

18 THE COURT: Welcome back.

19 THE WITNESS: Thank you very much.

20 THOMAS BRITVEN,

21 called as a witness by the TriZetto,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. CARSON:

25 Q. Welcome back, Mr. Britven.

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1 A. Thank you very much.

2 Q. During Mr. Plumpe's cross-examination, there was discussion
3 about the latest date that revenue information from Syntel is
4 available. Did you have information that went beyond
5 June 2018?

6 A. I did not.

7 Q. And does it appear that any of Syntel's experts had
8 information that went beyond June 2018?

9 A. No. Mr. Plumpe doesn't have it in his report, Mr. Sheets
10 doesn't have it in his report, and it's my understanding the
11 jury will be asked to determine damages through October of
12 2020.

13 Q. In your experience as a certified fraud examiner, is there
14 any conclusion that you draw or any inferences that you draw
15 from the lack of information?

16 A. Well, in this case, given the discovery issues around
17 revenues, it raises a red flag.

18 THE COURT: It raises a?

19 THE WITNESS: Red flag.

20 Q. You've been present throughout this entire trial. Have you
21 heard any testimony about any other instances where Syntel
22 concealed information?

23 MR. GROOMBRIDGE: Objection, your Honor.

24 THE COURT: Sustained.

25 Q. Let me try to rephrase.

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Britven - Direct

1 Have you become aware through this trial of any other
2 instances where there was not information provided by Syntel?

3 A. Yes, with regards to Mr. Rubin's work, the neutral forensic
4 examiner, he was not able to look at all of Syntel's computers.
5 And then we heard last week that there was 17 computers hidden
6 in a closet in India.

7 Q. Let's turn to your \$284 million in unjust enrichment. And
8 you're measuring that by avoided costs. Does that depend in
9 any way on how much money Syntel made?

10 A. No, it does not, and the reason it does not is because at
11 the time of the misappropriation, Syntel saved time, \$284
12 million in money, as well as time. So they saved the money and
13 they saved the time. In terms of the time, they saved 10
14 years. I didn't even include that in my calculations.

15 Q. Have any of Syntel's damages experts calculated how much it
16 would have cost Syntel if they set out to develop the
17 misappropriated trade secrets?

18 A. No, they have not.

19 Q. Mr. Plumpe talked a lot about the Duff & Phelps report and
20 about obsolescence and royalty. Let's start with obsolescence.
21 What does it mean when Mr. Plumpe makes this big obsolescence
22 adjustment to your \$284 million?

23 A. Mr. Plumpe is trying to reduce my number by two-thirds, so
24 basically one-third of my \$284 million is \$94 million. And he
25 would have the jury to believe that Syntel, starting from

Kaq3syn3

Britven - Direct

1 scratch, could develop all the software that was taken, all
2 those manuals and guides, all the tools, the Data Dictionary,
3 the whole basket of that for less than 100 million, and that's
4 just not real world.

5 In the real world, TriZetto with tremendous advantages
6 of the 200 people in New Jersey, and all of their legacy
7 knowledge, including Mike Noonan who has 20 years' experience,
8 including the advantages associated with having the prior
9 versions and the prior manuals and access to all of the
10 TriZetto clients, actually spent 284 million.

11 Q. Mr. Britven, is Facets obsolete?

12 A. No, not at all. It is worth more today than it was when we
13 started this case.

14 Q. Why do you say that?

15 A. It's in more places, it is bigger, it's more complicated.
16 Healthcare laws have expanded, as has the program, and the
17 market has gotten bigger.

18 Q. Mr. Plumpe also talked about the 10 percent royalty based
19 on the Duff & Phelps report. Can you explain why Mr. Plumpe's
20 opinion is not correct.

21 A. So, Mr. Plumpe wants to use the 10 percent from the Duff &
22 Phelps report, and that's on Exhibit 3.1., among other places.
23 Also on Exhibit 3.1 is a calculation of that royalty.

24 When you look at that exhibit, you can see that if you
25 take the 10 percent times the revenues for the payer portion of

Kaq3syn3

Britven - Direct

1 the business, that's \$950 million. We know from the testimony
2 that Facets makes up half of the payer portion of the business.
3 That's \$475 million. And Mr. Plumpe would have you believe
4 that a reasonable royalty is around 1.7 million out of that
5 475. That does not make sense.

6 Q. I know we've talked about this before, but let's get to the
7 heart of the matter here.

8 Would these parties actually agree to a running
9 royalty?

10 A. No, we talked about this last week. These parties are not
11 getting along. In that circumstance, it's going to be a lump
12 sum. But more importantly, in this circumstance, where Syntel
13 will not provide accurate or complete revenue information under
14 court supervision in order for a royalty to be calculated, they
15 would have to provide that information to TriZetto in the
16 normal course of business, and I think that's highly unlikely.

17 Q. Mr. Plumpe has attacked your 284 million figure as being
18 economically unreasonable and overstated. What's your
19 response?

20 A. So, what's economically unreasonable here is his notion
21 that Syntel gets a free roll of the dice. Syntel does not get
22 to use all this information to build their business, and then
23 at the end say we didn't make any money, we don't owe anything.
24 That's not how it works.

25 Q. I'm going to ask Mr. Thomas, I want to just talk briefly

Kaq3syn3

Britven - Direct

1 about Mr. Sheets' opinion. And Mr. Sheets did calculate based
2 on the Syntel document that I showed to him about how much it
3 would cost to replace employees. He calculated how much would
4 it cost for Syntel to replace those 84 employees in 2014.

5 A. That's correct.

6 MS. CARSON: Mr. Thomas, if you can pull that up.

7 A. I think it's about 2.5 million, a little less.

8 Q. I spoke to Mr. Sheets about why he doubled that number.

9 Can you explain to the jury why he doubled that number.

10 A. He explained that, that was time value of money. So, when
11 he brought that number forward, it basically a little more than
12 doubled. So the 2.5 became a little over 5 million.

13 Q. Mr. Britven, your \$284 million, that's as of 2014, correct?

14 A. That's right, I did not bring my number forward.

15 Q. You didn't double your number, right?

16 A. No. If I had applied that same methodology, my number,
17 too, would also more than double.

18 Q. I just want to ask you since you have been here through
19 this entire trial, is there anything that you've heard during
20 your trial that changes your view that the appropriate amount
21 that Syntel should pay to TriZetto for the trade secrets that
22 it stole is \$284 million?

23 A. No, my number hasn't changed. It is a good number.

24 Q. We've heard a lot about Syntel's activities in this during
25 the testimony. Does your number include punitive damages?

KaQ3syn3

Britven - Cross

1 A. No, that's for the jury to decide.

2 MS. CARSON: Thank you, Mr. Britven.

3 THE WITNESS: Thank you.

4 CROSS-EXAMINATION

5 BY MR. GROOMBRIDGE:

6 Q. Good morning or good afternoon at this point.

7 A. Good afternoon.

8 Q. Let's just talk about the 17 computers that you just
9 mentioned.

10 A. Yes, sir.

11 Q. In fact, you said they were locked in a closet. But in
12 fact, they were computers that nobody could find, correct?

13 A. I heard the testimony they were in the closet in India.
14 That's what I heard from the testimony.

15 Q. Well, would you agree with me that if the ladies and
16 gentlemen want to find out what the best source of information
17 is here, they should look at the forensic examiner's report,
18 correct?

19 A. Well, no. He wouldn't know about them because they were
20 concealed from him.

21 Q. Well, if the ladies and gentlemen want to find out whether
22 those were in a closet or whether they were computers that had
23 gone, that no one could track down, they should look at what
24 the forensic examiner said, correct?

25 A. The forensic examiner will only be able to talk about what

Kaq3syn3

Britven - Cross

1 he actually saw and his observations. He won't know the rest
2 of the story.

3 Q. Have you ever read his report?

4 A. I did.

5 Q. You'd agree with me it's Exhibit 245, Defendant's Exhibit
6 245?

7 A. I don't remember the number, sir.

8 Q. You'd agree with me that one of the attachments to his
9 report has a list of the computers that he couldn't find,
10 right?

11 A. That's correct.

12 Q. And if the ladies and gentlemen want to find out whether
13 they were in a closet or they simply couldn't be tracked down,
14 the best thing for them to do would be to look at Defendant's
15 Exhibit 245, correct?

16 A. And listen to the testimony where we learned that the
17 computers were hidden in a closet.

18 Q. Well, you'd agree with me that TriZetto had the opportunity
19 to call the forensic examiner and decided not to, correct?

20 A. I don't know how that works.

21 Q. You don't know whether they said we're going to call him as
22 a witness and then they changed their minds and said we're not
23 going to call him as a witness?

24 A. I don't know either way, sir.

25 Q. Now, the computers that no one could find, you agree with

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Britven - Cross

1 me that one of them belonged to the gentleman we talked about
2 last week by the name of Viral Dave?

3 A. I don't recall. I am just not that good. I wish I was two
4 years ago, but I don't remember.

5 Q. Let's see if while we are talking one of my colleagues can
6 find it in Defendant's Exhibit 245 that list of the computers
7 who -- who couldn't be tracked down. I'm going to ask my
8 colleagues to see if they can find that.

9 Let me, in the interest of time, let's just refresh
10 ourselves about Mr. Dave. Now he was the gentleman who did a
11 lot of downloading on Thursday, November 6, 2014, correct?

12 A. I don't remember the day, but he did a lot of downloading
13 in November 2014, that's correct.

14 Q. On a Thursday?

15 A. In the week of Thanksgiving, yes.

16 Q. Thanksgiving is later. Right. This is --

17 A. You're correct. You asked me last time if I remembered the
18 day and I didn't and I still don't remember the date, but I'll
19 accept your date. It's in November, I agree.

20 Q. That was a Thursday, right?

21 A. That's what you told me last time, I agree.

22 Q. And then, you told us that the Friday was his last day.
23 Right?

24 A. I think we looked that up together.

25 Q. And it turned out that the Monday following, the 10th, was

Kaq3syn3

Britven - Cross

1 his first day working at Cognizant, right?

2 A. Yes.

3 Q. If it should turn out his is one of the computers that
4 couldn't be tracked down, would you agree with me that a much
5 more likely explanation is he downloaded those onto his
6 computer and took them with him to Cognizant?

7 A. How could he take a computer to Cognizant if it's in the
8 closet?

9 Q. You've heard the testimony Mr. Dave was working in
10 TriZetto's office in Colorado, correct?

11 A. I don't remember his location specifically.

12 Q. And in fact, what really happened, was on the Friday, he
13 stopped being a Syntel employee, and on the Monday he came back
14 to the same office, and sat down at the same desk, to do the
15 same work but he was now a Cognizant employee, right?

16 A. I'll accept your representation.

17 Q. And the reason that his computer couldn't be found is
18 because he still had it, right?

19 A. I'll -- I don't know, sir.

20 Q. So, do you know how many of those 17 people whose computers
21 couldn't be found, how many of them went to work at Cognizant?

22 A. Specifically, no, I do not know.

23 Q. Have you ever asked?

24 A. No. I think at one point I probably had a general idea,
25 but I don't recall.

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Britven - Cross

1 Q. Now let's just talk about some of the avoided costs here.
2 You didn't change your testimony from last week about avoided
3 costs?

4 A. No.

5 Q. So you said to me that what was going on here was it was
6 like someone set up their own Genius Bar to mend iPhones.
7 You're not changing that testimony?

8 A. That was your analogy, sir.

9 Q. Now, we do agree that you're saying that Syntel should pay
10 for the entire development of Facets, even though it's still a
11 very valuable product and TriZetto and Cognizant are making a
12 whole pile of money from it, right?

13 A. Syntel should pay for what they took, that's how it works.
14 That's why it is called an unjust enrichment.

15 Q. They've found this. Let's blow up the part of the page
16 about missing computers. Right.

17 Do you see that? That's the 17 missing computers,
18 right?

19 A. Those are 17, yes, sir.

20 Q. Those are 17 that you were referring to in your direct
21 testimony just now, correct?

22 A. I didn't know the specific names relative to the 17, but I
23 did say 17, I agree.

24 Q. These are the 17 that you were referring to; am I right?

25 A. I was referring to the 17 that were missing and correlating

Kaq3syn3

Britven - Cross

1 that to what was in the closet.

2 Q. There is nothing in here about it being in a closet. It
3 just says they're missing, right?

4 A. No we heard the testimony that they were in a closet.

5 There are missing computers that was in the closet. That was
6 the testimony.

7 Q. Would you agree with me that the ladies and gentlemen
8 should decide for themselves what they heard?

9 A. That's true, but I also need to answer your complete -- or
10 answer your question completely.

11 Q. Sir, would you agree with me that one of the persons whose
12 computer was missing was Viral Dave?

13 A. Yes, sir.

14 Q. And you see on the other side, the second and third
15 entries, Chelan Chaudhary and Chetankumar Chaudhary?

16 A. Yes, sir.

17 Q. Do you agree with me that's actually the same person,
18 correct?

19 A. I'll accept that representation.

20 Q. So it's really 16, not 17, correct?

21 A. I'll accept that.

22 Q. And Mr. Chaudhary was another person who got hired on at
23 Cognizant, right? We've heard that?

24 A. I don't recall that, but I'll accept your representation.

25 Q. While we're at it, just recognizing names, do you see on

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Britven - Cross

1 the other side it says Swapnil Adhav there?

2 A. Yes, I see that.

3 Q. That's another person about whom we've heard testimony
4 being hired on at Cognizant, right?

5 A. I'm under oath. I don't specifically recall, but that
6 would make sense.

7 Q. And you are not able to tell me of the ones who aren't
8 highlighted how many of those people went to Cognizant and took
9 their computers, right?

10 A. No, I don't have the list memorized.

11 Q. Now, sir, we can take that down. Thank you.

12 If I took your reasonable royalty -- what you said if
13 I remember is that for a reasonable royalty, you think that
14 TriZetto should pay \$142 million?

15 A. I think you mean Syntel.

16 Q. I'm sorry.

17 A. And that's correct.

18 Q. I misspoke and I apologize.

19 You think that Syntel should pay \$142 million,
20 correct?

21 A. That's correct, sir.

22 Q. And now, when you were testifying last week, the only
23 revenue that you pointed to us that Syntel had made by use of
24 the trade secrets we're talking about here was for the UHG
25 business, correct?

Kaq3syn3

Britven - Cross

1 A. Yes, I just presented the UHG revenues and lost profits.

2 Q. So, and the number you presented for UHG revenues was about
3 \$27 million, right?

4 A. That sounds about right.

5 Q. And that's revenue, correct? That's not profit.

6 A. Right, and my profit was 8.5 million.

7 Q. But if we were going to express your royalty as a
8 percentage of revenue, would you agree with me that that would
9 be in the neighborhood of 500 percent?

10 A. I have a calculator here.

11 You want to use it as revenue?

12 Q. Yes. As a percentage of revenue, what's 142 as a
13 percentage of 27?

14 A. It is a little over 500 percent.

15 Q. Right. And so what you're saying, let's imagine that
16 hypothetical negotiation. What you're saying is here is a \$10
17 bill, here is a \$1 bill, I'll sell it to you for \$5. That's
18 what you're saying?

19 A. No, what I'm saying is that you are going to become the
20 leading third-party supplier of Facets services, and that's a
21 big stinking deal, and you're going to pay money for that.

22 Q. What you are saying is for the opportunity to make \$27
23 million, you are going to pay five times as much?

24 A. That's one account for one period of time. If you continue
25 to use the trade secrets beyond just that period, and there are

Kaq3syn3

Britven - Cross

1 other clients as well, and you're missing the big picture here
2 with the value associated with becoming the leading provider,
3 lead third-party provider of Facets service. That's what
4 Syntel and Atos are.

5 Q. Sir, if I said I'll sell you a \$100 bill for \$500, would
6 you take that offer?

7 A. You know I wouldn't and it's ridiculous and so is your
8 analogy.

9 Q. Well, we do agree that it's \$27 million in revenue?

10 A. For one account.

11 Q. You say \$142 million in royalty?

12 A. The 142 does not relate specifically to UHG. You know
13 that.

14 Q. Sir, again, the only revenue number you showed the jury was
15 for UHG, correct or not correct?

16 A. That is technically correct.

17 Q. Sir, you know that in the Duff & Phelps report they
18 actually looked at comparable royalty rates, correct?

19 A. They say that, yes.

20 Q. Well, are you now suggesting that Duff & Phelps was lying
21 in the report?

22 A. No, they say that. They say that in all those reports.

23 Q. Let's back up. What a comparable is, is a way of figuring
24 out the value of something, fair?

25 A. Yes, that's correct.

Kaq3syn3

Britven - Cross

1 Q. So for example, if I want to figure out how much my house
2 is worth, I can hire someone who will look at other houses in
3 the neighborhood that are pretty similar to mine, see how much
4 they sell for, and that would be a good indication of how much
5 my house is worth, right?

6 A. Yes. And in the housing market that's how it works, I
7 agree.

8 Q. In the valuation business, that's what we would call a
9 comparable, right?

10 A. Yes. And then we have to take into account the situation
11 we're looking at, and the situation here is the license would
12 cause sales to shift away from TriZetto. So the royalty they
13 would charge would be higher.

14 Q. Sir, let's just look at what Duff & Phelps said about that.
15 Mr. Stevenson, let's put up Plaintiff's Exhibit 846, and we'll
16 go to page 59, please. Let's blow up the portion on the top
17 under existing and comparable third-party licensing.

18 This is Duff & Phelps talking about one of the things
19 they did to come up with their 10 percent royalty rate.
20 Correct?

21 A. That's right.

22 Q. And they said, "We conducted a generalized search for
23 publicly available information on licensing agreements for
24 technologies within industries similar to the company." Right?

25 A. Hmm-hmm.

Kaq3syn3

Britven - Cross

1 Q. And company here means TriZetto, right?

2 A. That's correct.

3 Q. And they looked at a database they call their ktMine. You
4 see that?

5 A. Yes.

6 Q. That's a list of other license agreements that are
7 comparables, right?

8 A. Well, it is a list in general, and they pulled down from
9 that database.

10 Q. And what they said at the bottom is of the licenses they
11 found, the royalty rates ranged from a low of 5 percent to a
12 high of 25 percent?

13 A. That's correct.

14 Q. And median was 10 percent, right?

15 A. Yes.

16 Q. And those are license agreements that people did in the
17 ordinary course of business not in a lawsuit?

18 A. I didn't hear the last part.

19 Q. Not in a lawsuit.

20 THE COURT: Not in a lawsuit.

21 THE WITNESS: Not in a lawsuit.

22 A. It depends on -- sometimes you will see royalty rates come
23 out of lawsuits.

24 Q. Well, so the highest royalty rate that they were able to
25 find in a comparable license agreement was 25 percent, fair?

Kaq3syn3

Britven - Cross

1 A. That's what this is showing, yes, sir.

2 Q. You are asking for 500 percent.

3 A. Well, those are not comparable numbers.

4 Q. Let's just talk a little bit, you have made some assertions
5 about information not being updated, right?

6 A. That's correct.

7 Q. And you said that it was a red flag, right?

8 A. Yes, it is.

9 Q. Now, you are aware there is not any allegation of fraud in
10 this case, correct?

11 A. That's my understanding.

12 Q. In the five years that this case has been pending, there's
13 never been an allegation of fraud, correct?

14 A. I don't know of an allegation of fraud, but you are asking
15 me to make a representation under oath I haven't studied.

16 Q. You certainly not coming into this court now and for the
17 first time suggesting that there was indeed a fraud, are you?

18 A. No, that's not what I'm saying. I'm saying the revenue
19 production here has been very anomalous and unusual, and that's
20 not the way this is supposed to work.

21 Q. You have heard the testimony that Syntel de-emphasized the
22 Facets business, correct, in the last couple of years?

23 A. I did hear that. I can also see the advertisement where
24 they now claim to be the leading provider of Facets services,
25 so those two things are inconsistent.

Kaq3syn3

Britven - Cross

1 Q. And you would agree with me that what Cognizant is really
2 unhappy about is Syntel is competing with them to provide
3 services in the Facets area, correct?

4 A. They're unhappy because they believe Syntel and Atos are
5 using the trade secrets to unfairly compete against them.

6 Q. Well, sir, isn't it true those advertisements are just
7 saying you can come to us and we'll do Facets work for you?

8 A. No, it's much more than that, sir. It says "the," not "a,"
9 not "we want to be." It says we are the leading third-party
10 provider. They achieved their goal.

11 Q. Sir, and that's what Cognizant is unhappy about, right?

12 A. No. Cognizant is unhappy about Syntel Atos using the trade
13 secrets in the confidential information to compete unfair.
14 Others compete fairly. They simply want Syntel and Atos to
15 compete fairly. They shouldn't have the benefit of the trade
16 secrets, because it does provide a tremendous competitive
17 advantage.

18 (Continued on next page)

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KAQTSYN4

Britven - Cross

1 BY MR. GROOMBRIDGE:

2 Q. Now let's talk about what happened at the time when the
3 announcement was made that Cognizant was going to buy TriZetto.

4 A. Okay.

5 Q. And it was following that that the employees left Syntel to
6 go work for Cognizant, correct?

7 A. Yes.

8 Q. And one of the things that the jury is being asked to
9 decide are if they find that there was liability on that is
10 what is the monetary impact of those employees having gone to
11 Cognizant, correct?

12 A. As a result of the use of the confidential information.

13 Q. And now did you hear the testimony from Mr. Reddy that the
14 people who were hired were not just anybody, they were mentors?

15 A. I understand some mentors moved, yes.

16 Q. They were leaders in the organization, correct?

17 A. I don't remember the word leaders, but they were part of
18 the mentoring group. I remember that part.

19 Q. And you remember he used the term "force multiplier,"
20 correct?

21 A. I remember that term, yes, sir.

22 Q. And a force multiplier is something that contributes beyond
23 just what it has itself, correct?

24 A. Yes.

25 Q. That's the term "multiplier?"

KAQTSYN4

Britven - Cross

1 A. Yes.

2 Q. And so what he was saying here was you didn't just hire
3 away anybody, you hired away the people who were really the
4 core of our organization. That's what he was saying, right?

5 A. He's saying they took some of the mentors. There's a lot
6 of people in the organization. He said he took some of the
7 mentors, and I agree with that.

8 Q. You agree that he took the mentors, right?

9 A. I think that's what the testimony is.

10 Q. And he also said that those mentors could train -- each one
11 of them could probably train up another ten people, right?

12 A. Yes.

13 Q. And you, in the course of your opinions, made no study of
14 the job market for people with Facets skills at this time in
15 the fall of 2014, correct?

16 A. I'm not sure what you mean by no study of the job market.

17 Q. Let's take a look at your deposition.

18 MR. GROOMBRIDGE: And Mr. Stevenson, could you put up
19 Mr. Britven's January 30, 2019 deposition at page 85, line 7
20 through 13.

21 Q. Mr. Britven, in your deposition you were asked this
22 question and gave this answer:

23 "Q. For your report, did you investigate whether individuals
24 with experience working on TriZetto's products, such as Facets,
25 were common in the labor market?"

KAQTSY4

Britven - Cross

1 "A. I haven't performed an analysis of the labor market. I do
2 have observations, but I didn't perform an analysis of the
3 labor market."

4 Is that your testimony?

5 A. That's my testimony, and I think it's consistent with my
6 answer here today.

7 Q. And you would agree, having heard the evidence, that people
8 with Facets experience were in short supply in the job market
9 at that time in the fall of 2014, correct?

10 A. I think the market was tight at that time, yes, sir.

11 Q. And so it wasn't a situation where Syntel could just go out
12 and hire people, couldn't just put a job ad on some internet
13 board and hire the people it needed, correct?

14 A. Yes and no. It depends on how badly they wanted people.
15 It's my understanding that folks that moved over to TriZetto
16 received wages. I think money makes a difference in terms of
17 where people work.

18 Q. While we're on that, are you referring to the fact that in
19 some cases Cognizant paid hefty increases in order to persuade
20 folks to leave TriZetto?

21 A. I understand some folks were underpaid at Syntel and
22 TriZetto paid them more.

23 Q. Whether you call that underpaid or not, we're agreeing on
24 the fact that in order to get people to leave TriZetto,
25 Cognizant offered them big raises, fair?

KAQTSYN4

Britven - Cross

1 A. Yes.

2 Q. And that would suggest that Cognizant knew how much they
3 were making at Syntel, right?

4 A. Somehow or another the employee or the candidate and
5 TriZetto got to a number. I'm assuming there was some
6 disclosure by the employee. That typically happens in our
7 interviews.

8 Q. Somehow or another the employees' salaries at Syntel became
9 known to Cognizant, fair?

10 A. I know that's an allegation. I think salaries become known
11 in the interview process frequently, I don't know the specifics
12 you're referring to.

13 Q. Would you agree with me that one of the effects of the
14 announcement that Cognizant was going to buy TriZetto was to
15 open up new opportunities in the market for Syntel?

16 A. That is a pretty vague question. There's talk of synergies
17 between TriZetto and Cognizant, and that could satisfy what
18 you're asking about.

19 Q. Would you agree with me that there were certain customers
20 who didn't want to work with the combined company of TriZetto
21 and Cognizant?

22 A. There's talk of that concerning the documents, I don't know
23 which company specifically.

24 MR. GROOMBRIDGE: Let's take a look. Let's put up
25 Plaintiff's Exhibit 143, please.

KAQTSYN4

Britven - Cross

1 Q. Now you're familiar with this document, right, Mr. Britven?

2 A. Yes, sir.

3 Q. And this is on September 21st, 2014, correct?

4 A. Yes.

5 Q. That's a Sunday, right?

6 A. I don't know.

7 Q. And it says prepared for board meeting, that means the
8 board of directors of Syntel, correct?

9 A. Yes, sir.

10 Q. What was going on here, and just we don't all move in the
11 same world, the board of directors is the very top management
12 of the company, right?

13 A. Yes.

14 Q. And what was going on here, this is six days after the
15 announcement that Cognizant was going to buy TriZetto, right?

16 A. I agree.

17 Q. And the board of Syntel convened a meeting to figure out
18 what was going to be their response and how this was going to
19 impact their business, correct?

20 A. I guess fair.

21 MR. GROOMBRIDGE: And let's look at slide number 3,
22 please, and let's blow up the part on the left that says "for
23 the market," the whole box.

24 Q. So this is Syntel's management six days after the deal has
25 been announced talking about the reactions that they have seen,

KAQTSYN4

Britven - Cross

1 right?

2 A. Mm-hmm.

3 Q. And the first thing it says, media buzz around the deal.

4 That's a really big deal, right?

5 A. That's correct.

6 Q. Then they say an early concern on some major customers. Do
7 you see that?

8 And they're talking there that some of the customers
9 aren't very happy about the fact that this deal will take
10 place, correct?

11 A. I think what the customers are talking about is they're a
12 little concerned about not having the option of getting some
13 services from TriZetto and then the options they're getting of
14 some services from Cognizant. Some customers used to do that
15 and now those two combined.

16 Q. So what is going on here is markets don't like monopolies.
17 That's what they're talking about, right?

18 A. That's what it says.

19 Q. And the point here is that the customers like and want
20 competition, correct?

21 A. They do.

22 Q. And the reason they like and want competition is because
23 competition brings us lower prices, all things being equal,
24 right?

25 A. Generally speaking, that's true.

KAQTSYN4

Britven - Cross

1 Q. And competition brings us better quality services, all
2 other things being equal, correct?

3 A. That's also true.

4 Q. And so there was an opportunity here for Syntel to exploit
5 the fact that some of the customers might now be more
6 interested in buying services from Syntel, correct?

7 A. And that's fine, and they could have exploited that without
8 the use of trade secrets.

9 Q. And let's just look at the next slide, slide 4, please.

10 And here this again is a Syntel senior management
11 looking at what they think is going to happen in the
12 marketplace because of this deal, right?

13 A. They're talking about the opportunities and risks.

14 Q. The risks are things that are going to be bad for Syntel,
15 right?

16 A. That's correct.

17 Q. And the opportunities are the upside, are things that are
18 going to be good for Syntel, right?

19 A. Correct.

20 Q. And very first thing they say is monopolistic market, new
21 opportunities for Syntel, right?

22 A. Well, they're calling it a monopolistic market, but that's
23 not the correct definition. But there is additional
24 opportunities with the combination of TriZetto and Cognizant
25 for Syntel, for example, to do some of the low-end consulting

KAQTSYN4

Britven - Cross

1 work that Cognizant used to do.

2 Q. You have opined, sir, that the services market can be
3 broken into a low end, medium, and a complex series of pieces,
4 right?

5 A. That's correct.

6 Q. Would you agree with me that the only companies that
7 provide the complex service are Cognizant, now including
8 TriZetto on the one hand --

9 A. That's correct.

10 Q. -- and Syntel on the other hand.

11 A. That's correct.

12 Q. So if Syntel went away, Cognizant would have no competition
13 that that segment, right?

14 A. Unless someone else decided to start wading in there and
15 making the investments that are necessary.

16 Q. And just before we leave this, let's look at the last
17 bullet point under upside. You there it says: Open
18 competition versus loyalty to TriZetto can expand reach.

19 Do you see that?

20 A. Yes.

21 Q. What they're saying is now they can compete vigorously,
22 whereas, up until this point, they had had loyalty to TriZetto,
23 correct?

24 A. Well, I looked at the documents. They were far from being
25 loyal to TriZetto, so I'm not sure what you're saying there.

KAQTSY4

Britven - Cross

1 Q. This is the board of directors talking to themselves in
2 private, why would they have any motivation to say something
3 that they don't think is true?

4 A. The documents I saw would contradict that.

5 Q. What they said here is there was a big opportunity to get
6 new business, correct?

7 A. That loyalty to TriZetto could be from the customer
8 perspective, sir.

9 Q. Well, focusing on upside, \$70 million, what Syntel was
10 thinking to itself here six days after the deal announcement
11 was we have a chance to go out and pursue a whole lot of new
12 business, right?

13 A. Yes.

14 Q. But unfortunately they couldn't do that because all of
15 those mentors and leaders were hired away, right?

16 A. Not all, sir.

17 Q. They couldn't pursue the opportunities that otherwise would
18 have been available to them because a lot of the most important
19 people were hired away. Yes or no?

20 A. Yet somehow they became the leading third-party Facets
21 service provider without those folks.

22 Q. Perhaps they worked very hard, right?

23 A. They did a great job.

24 MR. GROOMBRIDGE: Thank you. No more questions.

25 THE WITNESS: Thank you.

KAQTSY4

Britven - Redirect

1 MS. CARSON: Your Honor, quick redirect?

2 THE COURT: I think you're out of time, but you have
3 three minutes.

4 MS. CARSON: Thank you, your Honor.

5 REDIRECT EXAMINATION

6 BY MS. CARSON:

7 Q. Mr. Britven, just three quick questions because I only have
8 three minutes. One thing that Mr. Groombridge just pointed you
9 to was some Syntel testimony about how Syntel is allegedly
10 deemphasizing Facets, and you said that was inconsistent with
11 their current advertisements that they're the leading
12 third-party provider of Facets. Can you explain that?

13 A. Yes. We saw earlier today that there's an advertisement
14 that says Facets is now the leading third-party service
15 provider -- or Syntel is the leading third-party service
16 provider on the Facets software, and some of the prior
17 advertisements noted that they were a leader, and it now
18 becomes the leader.

19 Q. Now I just want to switch gears. I think that during your
20 direct testimony we established that by Mr. Sheet's own
21 calculations it would have cost Syntel \$2.5 million to replace
22 those 84 employees in 2014, correct?

23 A. That's what they calculated internally, yes.

24 Q. Did you see any testimony by Mr. Street as to whether or
25 not Syntel even tried to replace those employees?

KAQTSYN4

1 A. I didn't hear any testimony to that effect.

2 Q. And Mr. Groombridge asked you lot of questions about the
3 competition. Are you saying that competition is bad?

4 A. No, competition is good. Competition is good. And there
5 is competition. There's competition -- there are other
6 platforms beyond the Facets platform. There's competition in
7 low end consulting, there's competition in less complex
8 consulting. There is, however, limited competition in complex
9 consulting because of the ginormous investments by Trizetto and
10 Cognizant. And you're not going to see them continue to make
11 those investments if others can come and use those trade
12 secrets and not have to pay.

13 Q. In your view, is it fair for Syntel to compete with
14 Trizetto using their stolen trade secrets?

15 A. Of course not.

16 MS. CARSON: No further questions. Thank you, your
17 Honor, for indulging me.

18 THE COURT: Thank you, Mr. Britven.

19 THE WITNESS: Thank you, your Honor.

20 THE COURT: Ladies and gentlemen, we'll break for a
21 half hour and then come back in. And what we have planned for
22 the afternoon is we have the charge to the jury and then
23 summations by the lawyers. That will probably take us to the
24 end of the day, so you will begin your deliberations first
25 thing tomorrow morning. That is my guess. They may decide to

KAQTSYN4

1 speak briefly, but I warn you that my charge is a little long
2 and I have given them each an hour.

3 So you're adjourned for lunch. Please don't talk
4 about the case. We're getting close to the end.

5 (Jury not present)

6 THE COURT: Is there anything that anyone would like
7 to raise?

8 MR. GROOMBRIDGE: Yes, your Honor. This is frankly an
9 unusual situation that I have not encountered before, so maybe
10 I could just explain the situation.

11 Over the weekend, Cognizant, through its general
12 counsel, sent to the websites that have been the focus of
13 tension here two what appear to be so-called takedown letters.
14 They appeared Saturday, and they say it has come to our
15 attention that you put up on your website certain information
16 which is identified with specificity and we request it be taken
17 down.

18 THE COURT: Sorry, this was sent to the Scribd
19 website?

20 MR. GROOMBRIDGE: It was sent to the Scribd website
21 and also to the Dokumen Tips website, apparently, two separate
22 letters.

23 And on Saturday, TriZetto sent us these letters marked
24 as defendant's exhibits and said they would seek to admit them,
25 and we objected on the basis that they were hearsay. And then

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1 yesterday TriZetto told us that they were withdrawing the
2 documents, both sides reconsidered their positions, and now we
3 would like to admit the documents and they oppose admission of
4 the documents. So that's the rather unusual situation.

5 What I might suggest, your Honor, is that we provide
6 your Honor with copies, because I think the analysis would be a
7 lot easier having seen them. And they're essentially one page
8 each, and if your Honor is acceptable, given the Covid
9 procedures, I'm happy to hand up my copies. Then perhaps
10 shortly -- so not to keep the jury waiting, but we reconvene
11 and get a ruling and we'll rest, and Mr. De Vries can make his
12 motion on the record.

13 THE COURT: Why don't you give me the documents,
14 that's a good start. Mr. Street, if you could take those, and
15 Mr. De Vries, if you want to tell me your position.

16 MR. DE VRIES: Your Honor, I believe Mr. Alper, who is
17 taking the lead on the letter that your Honor ruled on
18 concerning this issue, is going to address this, with your
19 Honor's permission.

20 THE COURT: Okay, that's fine.

21 MR. ALPER: Good afternoon, your Honor.

22 THE COURT: Good afternoon.

23 MR. ALPER: So these letters obviously relate to the
24 exhibits that your Honor already excluded. The reason for them
25 is obvious. When our client found out about these things on

KAQTSYN4

1 the internet live, the natural response is to do what they did,
2 which is to ask them to be taken down. While we were waiting
3 for an order on whether Syntel was going to be allowed to admit
4 the piracy website exhibits, we raised to them, so as to not
5 waive anything, these two potential exhibits.

6 Once your Honor excluded their exhibits as well as our
7 proposal to bring in the contextual exhibits to show that these
8 things were put up by an unknown hacker, we withdrew these
9 exhibits because our impression, which I believe was confirmed
10 by your oral order today, your Honor, was that your belief was,
11 as ours was, that any possible relevance here is greatly
12 outweighed by the misimpression that these affairs would create
13 for the jury in the ways that you already articulated during
14 your verbal order this morning.

15 And so from our perspective, at this point, for Syntel
16 to be able to now reput this in front of the jury to suggest to
17 the jury that this actually was an issue in this way when we
18 have been at this point precluded from bringing in our evidence
19 showing that this is actually an illicit hacker that put these
20 things out on the web, would not only further the prejudice and
21 further ring the bell that was already rung, from our
22 perspective improperly, by Syntel, it would also be further
23 contrary to law. As your Honor knows, you included in the jury
24 instructions what I believe you found to be the very clear law
25 that when a third party, and particularly a hacker like this,

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KAQTSYN4

1 puts something on the web, that doesn't destroy the trade
2 secret status of the trade secret. So there's no really
3 relevance.

4 And I would say one last thing on this, your Honor,
5 that is, as you probably saw in our papers, this wasn't
6 something that was raised in Syntel's pretrial memo, this
7 wasn't something that was raised as an issue in this case in
8 Syntel's opening statement. And what we feel is, given the
9 minuscule and potential relevance and the great potential for
10 prejudice, that allowing Syntel to continue to keep throwing
11 this out there at the jury will misdirect and confuse the jury
12 and misdirect them from what the real issues are.

13 For that reason, we think that not only those exhibits
14 should be excluded, but Syntel should not be permitted to raise
15 this issue in its closing because of the prejudice that it
16 would cause to our side.

17 THE COURT: Should not be able to raise what issue?

18 MR. ALPER: Should not be permitted to rely on the
19 exhibits that it showed the jury during the cross-examination,
20 which have now been excluded from evidence, in addition to
21 these letters they're proposing to bring into evidence now.

22 THE COURT: Okay. So what I'm going to do is I am
23 going to go and look at these and we'll all have lunch. I'm
24 not going to preclude Syntel from raising what the jury saw,
25 there was no objection at the time, and so whatever they saw

KAQTSYN4

1 and whatever happened here in court, they're not statements of
2 lawyers, which are not evidence, may be used in summation.

3 Let me look at these and see -- Mr. Groombridge, what
4 is the relevance of these documents?

5 MR. GROOMBRIDGE: Your Honor, as we see it, the
6 relevance is these are party admissions by TriZetto showing
7 that specific documents they have called out here have in fact
8 been placed on the internet. And that I fully accept, as they
9 say, they're not authorized. It gives a URL, so it gives
10 details and specificity about this.

11 And in our view, your Honor, there's a legal question
12 about whether something, once published in a certain fashion,
13 can then continue to be a trade secret. And it may well be
14 there is liability on the part of someone who published it
15 improperly, but our view of the law is that it ceases to be a
16 trade secret if it has become truly publicly available and
17 generally accessible, and to hold otherwise would be to
18 reinvent trade secret law. And so we think that it is relevant
19 to show that.

20 And I understand your Honor ruled this morning. It
21 may be this is a preservation issue, but we wanted to be clear
22 that's our view of why these letters matter.

23 THE COURT: To be clear, what I'm going to instruct
24 the jury on as the law and what is reflected in the charge
25 which I've distributed is that the question for the jury, in

KAQTSYN4

1 substance, is whether the information has become generally
2 available. And what I am instructing them is, as a matter of
3 law, it's not necessarily so that putting something on the
4 internet makes it generally available, and that makes it a fact
5 question to the jury, which, of course, you can argue that.
6 You shouldn't characterize that as a legal proposition because
7 it's inconsistent with what I will instruct them.

8 MR. GROOMBRIDGE: Absolutely. By the way, your Honor,
9 it will be Ms. Janghorbani doing the closing, and I'm quite
10 certain she will to that.

11 THE COURT: I should be talking to you,
12 Ms. Janghorbani.

13 MS. JANGHORBANI: All right. We're a team.

14 THE COURT: Thank you. So I will reserve on this. I
15 will go look at it. I will tell you now I'm inclined not to
16 allow it, so you shouldn't be doing any planning during the
17 lunch break. You can use that for whatever it's worth, and I
18 will come back and we'll bring the jury back.

19 Do you want to rest now?

20 MR. GROOMBRIDGE: We will rest at this point, your
21 Honor. Should your Honor come out a different place then --
22 but subject to that, we rest.

23 MR. DE VRIES: And your Honor, just two notes. One
24 was just for the record the admission of the cross exhibits
25 during Mr. Plumpe's recap, 1541, DTX 1543 and DTX 1546. Those

KAQTSYN4

1 are the ones that I was allowed to use based on agreement and
2 not the ones that your Honor sustained the objections on.

3 Then I will note that we have --

4 THE COURT: One moment. No objection to that?

5 MR. GROOMBRIDGE: There's no objection to those
6 exhibits being received, your Honor.

7 We do have one further follow-up point, but I think
8 Mr. De Vries is still --

9 THE COURT: They're admitted.

10 (Defendant's Exhibits 1541 and 1546 received in
11 evidence)

12 MR. DE VRIES: Thank you. The other thing I note is,
13 as we said previously, we do have 50(a) motions on the party's
14 claims and defenses, and now that the case has been rested, we
15 wanted to note that again.

16 THE COURT: Okay. I will reserve on those motions.

17 Mr. Groombridge, did you have one more thing?

18 MR. GROOMBRIDGE: I do, which is during the cross of
19 Mr. Plumpe, I'm sorry to say, it bore out our fears that the
20 3.4 billion, in our view, wasn't connected to any specific
21 intellectual property at issue in this case. And if there's
22 going to be argument in summation along those lines, we very
23 much don't want to interrupt that, we would like to be able to
24 place an objection on the record if what is going to be said
25 here is that the 3.4 billion somehow shows the value of this

KAQTSYN4

1 intellectual property.

2 MR. DE VRIES: Your Honor, what I established was that
3 DTX 1543, the announcement of the merger, provided as one of
4 its bases our investment in intellectual property. That was a
5 statement that was made by a Syntel witness.

6 DTX 1541, which is a document that is also from Atos
7 Syntel that is also talking about their investments in IP
8 specifically refers to the tools and accelerators that we have
9 been talking about throughout this case. So just as they have
10 argued that the \$2.7 billion is somehow relevant to calculating
11 damages, we believe that the \$3.4 billion is also, in the same
12 way, tied to the intellectual property. I intend to say
13 nothing more than that. I'm not going to say: And all of the
14 \$3.4 billion is attributable to that or try to quantity it.

15 THE COURT: So the billion dollar numbers are in the
16 record on both sides representing the acquisition costs by
17 Cognizant and Atos respectively. And given what you said, I
18 don't think there's anything that I need to offer or any
19 objection I need to sustain. Let's take a break.

20 (Luncheon recess taken)

21 (Continued on next page)

KAQTSY4

1 AFTERNOON SESSION

2 (1:40 p.m.)

3 THE COURT: Counsel, I have taken a look at the two
4 proposed exhibits, DTX 1542 and 1543, I'm going to exclude them
5 on the ground of 403. The probative value I find is slight.
6 These appear to be addressing documents found on the internet
7 on yet another day from the two days that have been at issue,
8 and I think for that reason have slight probative value, and I
9 think for the same reason the chance of confusing the jury
10 about what they are, what they mean, what they represent is
11 high, and also for the reasons that I already expressed this
12 morning about prejudice in precluding the other proposed
13 exhibits, so I will preclude those.

14 What we're going to do now is I will charge the jury.
15 I plan to do it from that box. I find I cannot breathe behind
16 this thing well enough to speak at length. I have given copies
17 to all the jurors. I'm going to tell them they can write on
18 them. I have given copies now to you and the court reporter,
19 and when we finish that, we'll take -- we may take a brief
20 break depending how long it takes, then we'll go directly into
21 our summations and finish summations today.

22 MR. ALPER: Yes, your Honor.

23 THE COURT: The other thing I would mention is, as you
24 know, the charge makes a reference to Court Exhibit 6, which is
25 the list of alleged trade secrets that you gave to me. So I am

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Charge

1 going to give that to the jury at the same time as the proposed
2 charge but I'm not going to read it.

3 MR. ALPER: Your Honor, earlier this morning we talked
4 about a potential short instruction on the amount of financial
5 data that was available to the parties. We have prepared a
6 brief one with the intent of not assigning blame to anyone in
7 discovery, as you instructed. Syntel objects to reading the
8 instruction in its entirety, and understanding that we're
9 trying to keep things moving, we wanted to ask you how you
10 would like to handle that.

11 THE COURT: I think that it came out sufficiently in
12 cross-examination that information after 2018 was not provided,
13 so I don't think that we need an instruction at this point.

14 MR. ALPER: Thank you, your Honor.

15 THE COURT: So let's get the jury.

16 (Jury present)

17 THE COURT: Good afternoon, ladies and gentlemen, and
18 welcome back from lunch. I discovered I can't talk at length
19 with a mask on, it is really too hard and I gasp for air, so
20 I'm standing in this box. Also, I get to stand up, which is a
21 nice change.

22 So we reached the part of the trial where both parties
23 or both sides have rested, which means they are done with the
24 presentation of evidence, and I'm about to give you the jury
25 charge. And I left a copy of the jury instructions for you on

KAQTSYN4

Charge

1 your chairs. That is your copy to keep until the end of your
2 deliberations. We'll shred them along with everything else
3 after the trial. You can put your initials on the front page
4 so you know it's yours, and if, as we go through it, you would
5 like to circle anything or mark anything in the margins, please
6 feel free to do that. This is your working copy.

7 I'm going to read this to you because that's what I'm
8 required to do, and you may find it helpful to follow along,
9 but if you're not the kind of person who finds it helpful to
10 follow along, you don't have to. It's for your benefit if you
11 want to use it.

12 The first thing that I will point out is there's a
13 table of contents, and that table of contents is your friend,
14 because when you get the verdict form, and I will go through
15 that with you later, the verdict form is basically questions
16 that you need to answer. And its organized in the same order
17 as Roman Numeral X down, and so you'll be able to refer to this
18 when you answer those questions, and that's why I'm giving you
19 your own personal copy.

20 So let me start. Members of the jury, you've now
21 heard all of the evidence in this case. You are about to hear
22 the final arguments of the parties and then you will undertake
23 your final and most important function as jurors. You have
24 paid careful attention to the evidence, and I am confident that
25 you will act together with fairness and impartiality to reach a

KAQTSYN4

Charge

1 just verdict in this case.

2 My duty at this point is to instruct you as to the
3 law. It is your duty to accept these instructions and apply
4 them to facts as you determine them. Just as it has been my
5 duty to preside over the trial and decide what testimony and
6 evidence was proper under the law for your consideration.

7 You are to consider these instructions together as a
8 whole; in other words, you're not to isolate or give undue
9 weight to any particular instruction.

10 It is a tradition and right of our legal system that
11 the parties involved in legal disputes have a jury chosen from
12 members of the community to render a verdict. Your role, as
13 the jury, is to decide the factual issues in the case. I, as
14 the judge, will instruct you on the law, and you must accept
15 the law as I state it to you. Then you will apply that law to
16 the facts as you find them. The result of your work will be
17 the verdict that you return.

18 You, as jurors, are the sole and exclusive arbiters of
19 the facts. You determine the weight of the evidence. You
20 appraise the credibility of the witnesses. You draw reasonable
21 inferences from the evidence or lack of evidence. And you
22 resolve such conflicts as there may be in the testimony. In
23 determining these issues, no one may invade your province or
24 functions as jurors. In order for you to determine the facts,
25 you must rely on your own recollection of the evidence, and I

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1 will instruct you momentarily on what is and is not evidence.

2 Because you are the sole and exclusive arbiters of the
3 facts, I do not mean to indicate any opinion as to the facts or
4 what your verdict should be. The rulings I have made during
5 the trial are not any indication of my views on what your
6 decision should be. You are expressly to understand that the
7 Court has no opinion as to the verdict you should render in
8 this case.

9 My role as the judge is to instruct you on the law,
10 and you are to apply the law to the facts you find them. You,
11 as jurors, are bound to accept my instructions of law even if
12 you feel that the law should be different from what I say.

13 Also, if anyone states in their closing arguments, for
14 example, a legal principle different from what I say in my
15 instructions, it is my instructions you must follow. You
16 should not single out any one instruction or any one word or
17 phrase in an instruction as alone stating the law, but you
18 should consider the instructions as a whole.

19 All parties to a civil lawsuit are entitled to a fair
20 trial. Therefore, you must make fair and impartial decisions
21 in order to arrive at a just verdict. Under your oath as
22 jurors, you are to be guided solely by the evidence or the lack
23 of evidence presented during the trial, as well as the
24 applicable law, without regard to your feelings, positive or
25 negative, for any party or attorney. All parties are entitled

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1 to the same fair and conscientious consideration. If you let
2 sympathy or bias interfere with your clear thinking, there is a
3 risk that you will not arrive at a just verdict.

4 As I have said, in determining the facts, you must
5 rely upon your own recollection of the evidence. What is
6 evidence? Evidence consists of the testimony of the witnesses,
7 the exhibits that I have received into evidence and any
8 stipulations. The stipulations contain facts that the parties
9 have agreed on, and you are to take the facts as true. By
10 contrast, what counsel have said in their opening statements,
11 in their questions and objections, as well as what they may say
12 in their closing arguments, is not evidence. Also, and
13 anything that I have said or may say about the facts, as well
14 as anything you have heard outside the courtroom, is not
15 evidence.

16 You should bear in mind that a question put to a
17 witness is never evidence. It is only the answer that is
18 evidence. At times a questioner may have incorporated into a
19 question a statement that assumed certain facts to be true and
20 asked the witness if it was true. If the witness denied the
21 truth of the statement and if there is no direct evidence in
22 the record proving the assumed fact to be true, then you may
23 not consider it simply because it was contained in a question.
24 You also may not consider any answer that I directed you to
25 disregard or that I directed be stricken from the record.

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1 Exhibits that have been marked for identification or
2 have been identified as demonstrative aids are not evidence
3 unless they have been admitted into evidence by the Court. If
4 a demonstrative aid misstates the underlying evidence, it is
5 the underlying evidence that you must consider. Materials used
6 only to refresh a witness's recollection also are not evidence.

7 Arguments made by the attorneys are not evidence. If
8 your recollection of the facts differs from the statements made
9 by attorneys in their arguments, then it is your recollection
10 that controls.

11 During the trial I have been called upon to make
12 various rulings. There may have been objections, motions may
13 have been made to strike answer. You are to disregard these
14 procedural matters. They are matters of law. And although you
15 may have been curious about them, you should not consider them.
16 Objections are not evidence. Objections are a proper part of
17 trial process and you should make no inference or be influenced
18 in any way by an objection or by the Court's ruling on it.
19 Likewise, it is my function to cut off questioning, to strike
20 remarks, and to reprimand any person when I think it is
21 necessary, but you should draw no inference from that.

22 Also, the fact that I may have commented during the
23 course of the trial or asked questions of witnesses does not
24 indicate any feeling of mine about the facts or the credibility
25 of any witness. I have no such feelings, and my comments were

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1 intended only to clarify the issue at hand. You should draw no
2 inference or conclusion of any kind, favorable or unfavorable,
3 with respect to any witness or any party because of any
4 comment, question, or instruction of mine. It is for you alone
5 to decide the credibility of the witnesses and the weight, if
6 any, to be given to the testimony you have heard and the
7 exhibits you have seen.

8 Lastly, anything that you may have seen or heard when
9 court was not in session is not evidence. You are to decide
10 the case solely on the evidence that is presented to you in the
11 courtroom.

12 There are two kinds of evidence that you may use in he
13 reaching your verdict, direct evidence and circumstantial
14 evidence. Direct evidence is when a witness testifies about
15 something the witness knows by virtue of his or her own senses,
16 something the witness has seen, felt, touched or heard. Direct
17 evidence may also be in the form of an exhibit admitted into
18 evidence.

19 Circumstantial evidence is evidence that tends to
20 prove a disputed fact by proof of other facts. Circumstantial
21 evidence is of no less value than direct evidence. It is a
22 general rule that the law makes no distinction between direct
23 evidence and circumstantial evidence.

24 There is an example of circumstantial evidence that is
25 often used in this courthouse. Assume that when you came into

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1 the courthouse this morning the sun was shining and it was a
2 nice day. Assume that if the courtroom windows were covered,
3 the curtains, and you could not look outside, then as you were
4 sitting here someone walked in with an umbrella that was
5 dripping wet and a few minutes later someone else entered with
6 a wet umbrella. Now you cannot look outside the courtroom to
7 see whether it's raining, so you have in direct evidence of
8 that fact. But on the combination of facts that I asked you to
9 assume, it would be reasonable and logical for you to conclude
10 that it had been raining.

11 That's all there is to circumstantial evidence. You
12 infer from one or more established facts, on the basis of
13 reason, experience and common sense, the existence or
14 non-existence of some other fact. An inference is not a
15 speculation, a suspicion or guess. An inference is a reasoned,
16 logical deduction or conclusion, that you, the jury, are
17 permitted but not required to draw from the facts that have
18 been established by either direct or circumstantial evidence.

19 There are times when different inferences may be drawn
20 from the same proven facts. Here, the one side asks you to
21 draw one set of inferences while the other side asks you to
22 draw another. It is for you to decide which inferences you
23 will draw.

24 You have now had the opportunity to listen to and
25 observe all of the witnesses. It is now your job to decide how

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1 believable you find each witness's testimony to be. How do you
2 determine where the truth lies? You should use all of the
3 tests for truthfulness that you would use in determining
4 matters of importance to you in your everyday life.

5 One thing you should consider is any bias, hostility,
6 or affection that a witness may have shown for or against a
7 party. It is your duty to consider whether the witness has
8 permitted any such bias to color his or her testimony. If you
9 find a witness is biased, then you should view the witness's
10 testimony with caution, weigh it with care, and subject it to
11 close and searching scrutiny.

12 You should also consider any other interest or motive
13 that the witness may have in cooperating with a particular
14 party, as well as any interest the witness may have in the
15 outcome of the case. Interest in the outcome of the case
16 creates a motive to testify falsely, and may sway a witness to
17 testify in a way that advances his or her own interests.
18 Therefore, you should accept the testimony of an interested
19 witness with great care. Keep in mind, though, that it does
20 not automatically follow that testimony given by an interested
21 witness is to be disbelieved. There are many people who, no
22 matter how strong their interest in the outcome of a case,
23 would not testify falsely. It is for you to decide, based on
24 your own perceptions and common sense, to what extent, if any,
25 the witness's interest has affected his or her testimony.

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1 Additional factors you should consider are the
2 opportunity the witness had to see, hear, and know the things
3 about which he or she testified, the accuracy of the witness's
4 memory, the witness's candor or lack of candor, the witness's
5 intelligence, the reasonableness of the witness's testimony,
6 and the testimony's consistency or lack of consistency with
7 credible testimony. In other words, what you must do in
8 deciding credibility is to size up a witness in light of the
9 witness's demeanor, the explanations given, and all of the
10 other evidence in the case. Always remember that you should
11 use your common sense, your good judgment, and your own life
12 experience.

13 If you find that any witness has willfully testified
14 falsely to any material fact, that is, to an important matter,
15 then the law permits you to disregard the entire testimony of
16 that witness based upon the principle that someone who
17 testifies falsely about one material fact is likely to testify
18 falsely about everything. You are not required, however, to
19 consider such a witness as totally unworthy of belief. You may
20 accept as much of the witness's testimony as you deem true and
21 disregard what you feel is false.

22 While it is quite legitimate for an attorney to try to
23 attack the credibility of a witness, as the sole arbiters of
24 the facts, you must decide for yourselves which witnesses you
25 believe, what portion of their testimony you will accept, and

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1 what weight you will give to at that that testimony.

2 You have heard testimony of certain witnesses in the
3 form of depositions which have been received into evidence.

4 You heard other testimony from witnesses by video with audio
5 from remote locations. You may consider the testimony of a
6 witness given at a deposition or remotely according to the same
7 standards you would use to evaluate the live and in-person
8 testimony of a witness given at trial.

9 In this case, I have permitted certain witnesses to
10 express their opinions about matters that are in issue. A
11 witness may be permitted to testify to an opinion on those
12 matters about which he or she has special knowledge, skill,
13 experience and training. Such testimony is presented to you on
14 the theory that someone who is experienced and knowledgeable in
15 the field can assist you in understanding the evidence or in
16 reaching an independent decision on the facts.

17 In weighing this opinion testimony, you may consider
18 the witness's qualifications, his opinions, the reasons for
19 testifying, as well as all of the other considerations that
20 ordinarily apply when you are deciding whether or not to
21 believe a witness's testimony. You may give the opinion
22 testimony whatever weight, if any, you find it deserves in
23 light of all of evidence in this case. You should not,
24 however, accept opinion testimony merely because I allowed the
25 witness to testify concerning his or her opinion. Nor should

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1 you substitute it for your own reason, judge, and common sense.
2 The determination of the facts in this case rests solely with
3 you.

4 I am now going to explain the concept of "burden of
5 proof." This is a civil case, so the burden of proof, unless
6 otherwise instructed, is proof by a preponderance of the
7 evidence.

8 Each party has the burden of proving each disputed
9 issue for their own claims. The party with the burden of proof
10 on any given issue has the burden of proving to you every
11 disputed element of that party's claim by a preponderance of
12 the evidence. If you conclude that the party bearing the
13 burden of proof has failed to establish that party's claim by a
14 preponderance of the evidence, you must decide against that
15 party on the issue you are considering.

16 What does a "preponderance of the evidence" mean? To
17 establish a fact by a preponderance of the evidence means to
18 prove that the fact is more likely true than not true. A
19 preponderance of the evidence means the greater weight of
20 evidence, which refers to the quality and persuasiveness of the
21 evidence, not the number of witnesses or documents. In
22 determining whether a claim has been proved by a preponderance
23 of the evidence, you should consider the relevant testimony of
24 all witnesses, regardless of who may have called them, and all
25 of the relevant exhibits received in evidence, regardless of

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1 what may have produced them.

2 If you find that the credible evidence on a given
3 issue is evenly divided between the parties, meaning it is
4 equally probable that one side is right as it is that the other
5 side is right, then you must decide that issue against the
6 party having the burden of proof. That is because the party
7 with the burden of proof must prove more than a simple equality
8 of the evidence. On the other hand, the party with the burden
9 of proof does not need to prove any more than a preponderance
10 of the evidence. This means that as long as you find on a
11 given issue that the scales tip, however slightly, in favor of
12 the party with the burden of proof, then you must find for that
13 party on that issue, as that issue will have been proved by a
14 preponderance of the evidence.

15 Once more, I remind you, as I did at the beginning of
16 the trial, that proof beyond a reasonable doubt is the proper
17 standard of proof in a criminal trial. That requirement does
18 not apply to a civil case like this one, and you should put it
19 completely out of your mind.

20 So I'm now going to tell you about the law that you
21 will have to apply to the facts as you find them. They are to
22 help you evaluate the evidence in light of what you're asked to
23 do now that you have heard all the evidence. To the extent
24 that there are any differences between the preliminary
25 instructions that I gave you at the beginning of the trial and

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1 these final instructions, the final instructions are the ones
2 you must follow in your deliberations.

3 So first I'm going to walk through the parties'
4 claims. Again, this part of the instructions track the same
5 order of the questions in the verdict form.

6 So first I'm going to talk about TriZetto and
7 Cognizant's claims, and they have two of them. The first one
8 is the misappropriation of trade secrets claim.

9 TriZetto claims that Syntel Mauritius and Syntel,
10 Inc., which I will refer to together as Syntel, unlawfully took
11 and used TriZetto's trade secrets relating to its Facets
12 software in violation of the confidentiality provisions of the
13 Master Services Agreement, which I will call "the Agreement."
14 This is called misappropriation. TriZetto claims that Syntel
15 misappropriated certain other of these alleged trade secrets
16 after Syntel's customers, who licensed Facets from TriZetto,
17 provided them to Syntel.

18 TriZetto asserts two claims for the misappropriation
19 of trade secrets, one claim under federal law and one claim
20 under New York law. In connection with both of claims,
21 TriZetto has alleged that it owns 104 different trade secrets
22 related to its Facets software. Syntel denies that it is
23 liable on these claims and asserts what are called affirmative
24 defenses. I will tell you about affirmative defenses later
25 after I talk about the parties' claims.

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1 What is a trade secret? It's something that TriZetto
2 claims to have had that provides it with an opportunity to
3 obtain an advantage over competitors who do not know or use it.
4 "Secret" means that the information was known substantially
5 only by TriZetto, or others who were obligated to keep the
6 information secret, and that TriZetto took precautionary
7 measures to keep the information secret. Information is not
8 secret if it was publicly available. Absolute secrecy -- in
9 the sense that no one else in the world possessed the
10 information -- is not required.

11 TriZetto contends that 104 items are trade secrets
12 that Syntel Inc. and Syntel Mauritius misappropriated. The 104
13 items are listed in Court Exhibit 6, which I will provide to
14 you for your deliberations. In fact, you already have it. It
15 is the other piece of paper that was given to you. I'm not
16 going to read it to you now or later, but if you just look at
17 it, you'll see that there is a list of 104 items, and those are
18 the items that are alleged by TriZetto to be trade secrets.

19 So, I told you there are two misappropriation of trade
20 secret claims. One is under federal law and one is under New
21 York law. So I'm going to talk now about the one under federal
22 law.

23 The Defend Trade Secrets Act became effective on
24 May 11, 2016. In determining whether TriZetto has proven its
25 claim for misappropriation of trade secrets under the Defend

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1 Trade Secrets Act, you may consider any acts of
2 misappropriation that occurred or continued to occur on or
3 after May 11, 2016, for each of the 104 alleged trade secrets.

4 A trade secret is defined in the Defend Trade Secrets
5 Act to include all forms and types of financial, business,
6 scientific, technical, economic or engineering information.
7 Under the DTSA, which is what I'm calling that federal law,
8 TriZetto must prove by a preponderance of the evidence that the
9 104 items are protectable trade secrets by demonstrating for
10 each item that:

11 1. It is not generally known to another person who
12 can obtain economic value from the disclosure or use of the
13 item;

14 2. Another person cannot readily discover the item
15 through proper means;

16 3. The item derives independent economic value,
17 actual or potential, from not being known to, and not being
18 readily ascertainable through proper means by another person
19 who can obtain economic value from the disclosure or use of the
20 item; and

21 4. TriZetto has taken reasonable steps to keep the
22 item secret.

23 Information that necessarily loses its secrecy as a
24 result of having been placed in the marketplace by TriZetto or
25 which is publicly available or ascertainable from public

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sources is not a trade secret. Absolute secrecy, however, is not required. Publication of a trade secret on the internet does not necessarily mean the secret has become generally known.

In making your determination of whether TriZetto has proven by a preponderance of the evidence that any of the 104 items are trade secrets under the Defend Trade Secrets Act, you may consider that products or services sold or licensed to customers without duties of confidentiality generally are not trade secrets, because they do not maintain their secrecy and do not derive their value from being kept secret.

For TriZetto to prove that Syntel misappropriated the trade secrets under the DTSA, TriZetto must prove four elements by a preponderance of the evidence for each alleged trade secret:

1. TriZetto owns the information at issue;
2. That the information is a trade secret that was protected as such at the time of the alleged misappropriation;
3. That Syntel, without TriZetto's express or implied consent, (a) acquired the trade secret knowing or having reason to know that the trade secret was acquired by improper means, or (b) disclosed or used the trade secret and either (i) used improper means to acquire the secret, or (ii) at the time of disclosure or use, knew or had reason to know that the trade secret was acquired under circumstances giving rise to a duty

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1 to maintain the secrecy of the trade secret, derived from or
2 through a person who owed such a duty or derived from or
3 through a person who used improper means to acquire it; and

4 . The trade secret is related to a product used in,
5 or intended for use in interstate or foreign commerce.

6 "Improper means," a term I just used, includes theft,
7 bribery, misrepresentation, breach, meaning breach of an
8 agreement or inducement of a breach of a duty to maintain
9 secrecy, or espionage through electronic or other means, and
10 does not include reverse engineering, independent derivation or
11 any other lawful means of acquisition.

12 Express consent is consent that is clearly and
13 unmistakably stated. Implied consent is consent that is
14 inferred from conduct that indicates approval or acceptance,
15 rather than from direct expression.

16 If you find that TriZetto has not proven by a
17 preponderance of the evidence that any one of the 104 items is
18 a trade secret, then you must find in Syntel's favor for that
19 particular trade secret. If you find that none of these 104
20 items is a trade secret, then you must find in Syntel's favor
21 on the claim.

22 So that's the federal claim. Let's talk now about the
23 New York misappropriation claim.

24 Under New York law, a trade secret is a formula,
25 pattern, device, or compilation of information that gives a

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1 party an opportunity to obtain an advantage over competitors
2 who do not know or use it. Generally, a trade secret is a
3 process or device for continuous use in the operation of a
4 business.

5 You should consider several factors to determine
6 whether any of the 104 items that TriZetto claims are trade
7 secrets in fact rise to the level of a trade secret:

8 1. The extent to which the item is known by others
9 outside of TriZetto;

10 2. The extent to which the item is known by TriZetto
11 employees and others involved in TriZetto's business;

12 3. The extent of measures taken by TriZetto to guard
13 the secrecy of the item;

14 4. The value of the item to TriZetto and its
15 competitors;

16 5. The amount of effort or money expended by TriZetto
17 in developing the item; and

18 6. The ease or difficulty with which the item could
19 be properly acquired or duplicated by others.

20 The most important consideration in determining
21 whether TriZetto has proven by a preponderance of the evidence
22 that it possesses a trade secret is whether the particular item
23 has been kept secret by TriZetto, or, instead, whether the
24 secret nature of the item has been necessarily lost by virtue
25 of TriZetto's placing it in the marketplace. Absolute secrecy,

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1 however, is not required. Generally, trade secrets cannot be
2 information that is publicly available or ascertained from
3 public sources. Publication of a trade secret on the internet
4 does not necessarily mean the secret has become generally
5 known. A combination of characteristics or components,
6 however, may be a trade secret, even where each element is in
7 the public domain, if the combination of publicly available
8 characteristics and components is unique and not publicly
9 known. You may consider that products or services sold or
10 licensed to customers without duties of confidentiality
11 generally are not trade secrets because they do not maintain
12 their secrecy and do not derive their value from being kept
13 secret.

14 If you find that TriZetto has not proven by a
15 preponderance of the evidence that any one of the 104 items is
16 a trade secret, then you must find in Syntel's favor for that
17 particular trade secret. If you find that none of these 104
18 items is a trade secret, then you must find in Syntel's favor
19 on that claim.

20 The four requirements to prove a misappropriation
21 claim under New York law are similar but not identical to those
22 under federal law. TriZetto must prove by a preponderance of
23 the evidence for each established trade secret:

24 1. What the trade secret is, in other words, TriZetto
25 must identify the trade secret with adequate specificity so you

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1 can understand what TriZetto was protecting and requiring to be
2 maintained as secret;

3 2. TriZetto must also prove that it possessed the
4 trade secret;

5 3. The item was a trade secret at the time of the
6 alleged misappropriation;

7 4. Syntel used the trade secret; and

8 5. That Syntel's alleged use was in violation of a
9 agreement, confidential relationship or duty or that Syntel
10 used the alleged trade secret as a result of discovery by
11 improper means.

12 "Improper means" under New York law generally are
13 means that fall below the generally accepted standard of
14 commercial morality and reasonable conduct. You will have to
15 decide whether TriZetto has proved its trade secret
16 misappropriation claims by a preponderance of the evidence.

17 So there are a couple of other instructions that apply
18 both to claims under New York law and federal law.

19 Under the DTSA and New York law, you may find that a
20 person used another's trade secret even if he uses it with
21 modifications or improvements, so long as the substance of the
22 resulting product is substantially derived from the other's
23 trade secret.

24 I instructed you during the trial that Syntel
25 misappropriated TriZetto's test cases and automation scripts.

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1 It is for you to determine whether the test cases and
2 automation scripts are trade secrets and whether Syntel
3 misappropriated the other alleged trade secrets.

4 So now I'm going to move on to TriZetto's other claim
5 which is a copyright claim against Syntel.

6 TriZetto claims that Syntel infringed TriZetto's
7 copyrights related to its Facets product. TriZetto claims that
8 Syntel infringed TriZetto's copyrights in the Facets 5.10
9 computer software as well as two presentations titled "Best
10 Practices in ICD-10 Configuration" and "Facets Roadmap Review."
11 Sometimes I will refer to Facets 5.10 and the two presentations
12 collectively as TriZetto's works, other times I'll refer to
13 them individually.

14 What is a copyright? Copyright is the legal
15 protection of original works against unauthorized copying by
16 others. Copyright protection subsists in a work the moment
17 that it is fixed in any tangible medium of expression, and does
18 not extend to ideas, procedures or processes embodied in the
19 work. Syntel denies infringing TriZetto's copyrights and
20 asserts affirmative defenses, which I will discuss after the
21 parties' claims. Under the copyright law, originality means
22 that the work was independently created by the author and not
23 copied from other works and possesses a minimal degree of
24 creativity.

25 To bring a civil action for copyright infringement of

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1 TriZetto's works, TriZetto was required to register each work
2 with the U.S. Copyright Office. I instruct you that TriZetto's
3 presentations titled "Best Practices in ICD-10 Configuration"
4 and "Facets Roadmap Review" are registered. Registration
5 creates a presumption that the work and its elements are
6 original and protectable. However, the mere fact that a work
7 is registered does not mean that every element of the work may
8 be protected. The parties dispute, and you will have to
9 determine, whether TriZetto can satisfy the registration
10 requirement to bring an action based on copying of Data
11 Dictionary.

12 There are two ways TriZetto can do so, both based on
13 Facets 5.10 registration. First, TriZetto can prove by a
14 preponderance of the evidence that the Data Dictionary software
15 tool was registered as part or a subpart of Facets 5.10.
16 Alternatively, TriZetto may establish by a preponderance of the
17 evidence that the Data Dictionary software tool is a derivative
18 work based on Facets 5.10, and that the Data Dictionary
19 software tool incorporates protected elements from the Facets
20 5.10 computer software.

21 A derivative work is a work based upon one or more
22 preexisting works. If you find in favor of TriZetto on that
23 alternative theory, TriZetto can bring an action for copyright
24 infringement for the protected elements from the Facets 5.10
25 computer software that are incorporated in the Data Dictionary

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1 software.

2 To succeed on its copyright infringement claim,
3 TriZetto must prove by a preponderance of the evidence two
4 elements:

5 First, that TriZetto is the owner of valid copyrights
6 in the TriZetto works at issue; and second, that Syntel copied
7 original elements from the copyrighted works. I will discuss
8 each these elements.

9 First, ownership of valid copyrights. As stated
10 above, the presentation titled "Best Practices in ICD-10
11 Configuration," "Facet Roadmap Review" and the software, Facets
12 5.10, are registered with U.S. Copyright Office, and you are
13 instructed that the certificates of registration provided as
14 Exhibits DTX 1378, 1379, and 1381 are sufficient to establish
15 that TriZetto owns a valid copyright in those works. I will
16 now turn to the second element of copyright infringement, that
17 Syntel copied original elements from the copyrighted works.

18 TriZetto may demonstrate copying directly, for
19 example, a witness who testifies that Syntel copied original
20 elements. TriZetto may also prove copying indirectly by what's
21 called, and what I described as, circumstantial evidence. If
22 you find by a preponderance of the evidence that: (1) Syntel
23 had access to TriZetto's works; and (2) Syntel's works and
24 original elements of TriZetto's works are substantially
25 similar, you are instructed to find copying, unless Syntel

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1 establishes that its work was independently created or some
2 other explanation for the similarities.

3 To determine whether Syntel's works are substantially
4 similar to TriZetto's works, you must consider: (a) consider
5 only the protectable elements of TriZetto's works, filtering
6 out the unprotected ones, and (b) ask yourself whether an
7 ordinary observer would conclude that the protectable elements
8 are substantially similar to Syntel's accused works.

9 Protectable expression includes elements that are original to
10 TriZetto and original combinations of unoriginal elements.

11 Unprotectable elements include mere ideas, elements dictated by
12 efficiency, elements required by factors external to the
13 program itself, and elements taken from the public domain.

14 So that is the summary of TriZetto's claims against
15 Syntel. Now I'm going to turn to the other side of the case,
16 which is Syntel's claims against TriZetto and Cognizant.

17 I've just summarized for you TriZetto and Cognizant's
18 claims against Syntel. I will now tell you about Syntel's
19 claims against Cognizant and TriZetto. As I said, TriZetto and
20 Syntel Mauritius had an agreement between them called the
21 Master Services Agreement. Syntel Mauritius claims that
22 TriZetto breached the agreement by violating the
23 confidentiality provision of the agreement, which prohibited
24 TriZetto from using Syntel Mauritius's confidential information
25 without consent.

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I didn't read the heading right there. But that first claim, which is Syntel's first claim, is called breach of contract.

To prevail on a breach of contract claim, Syntel Mauritius must prove by a preponderance of the evidence four elements:

1. Syntel Mauritius had a contract with TriZetto;
2. Syntel Mauritius performed as it was required to do under the contract;
3. TriZetto breached the contract by not doing what it was required to do under the contract; and
4. Syntel Mauritius was damaged by the breach.

As to the first element, the parties agree that the agreement is a valid contract, so you will need to determine only the second, third and fourth elements of this claim.

With respect to the confidentiality provision under the agreement, TriZetto was not permitted to use, store, publish, disseminate, transfer or disclose Syntel Mauritius's confidential information without first obtaining the consent of Syntel Mauritius, and I'll refer to this as the confidentiality provision. Syntel Mauritius contends that TriZetto breached the confidentiality provision of the MSA by using, disseminating, transferring or disclosing the confidential information related to the employees of Syntel Mauritius, Syntel Inc. and their affiliated companies that were deployed

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1 by Syntel Mauritius to provide services to TriZetto under the
2 agreement without first obtaining the consent of Syntel
3 Mauritius. The parties define confidential information under
4 the agreement to include information that a reasonable person
5 would recognize as confidential.

6 TriZetto contends that it did not breach the
7 confidentiality provision, and that in any event, Syntel
8 Mauritius materially breached the agreement, thereby excusing
9 TriZetto's performance under the agreement. But again, not
10 every breach of contract constitutes a material breach that
11 excuses another person's performance, and to be material, a
12 breach must be significantly substantial as to defeat the
13 purpose of the entire transaction.

14 If you decide that Syntel Mauritius did not materially
15 breach the agreement, and that TriZetto breached the
16 confidentiality provision of the agreement, you will find for
17 Syntel Mauritius on its breach of contract claim, and you will
18 go on to consider Syntel Mauritius's damages.

19 If you decide that TriZetto did not breach the
20 confidentiality provision of the agreement, or that Syntel
21 Mauritius materially breached the agreement, thereby excusing
22 TriZetto's performance under the agreement, you will find for
23 TriZetto on Syntel Mauritius's breach of contract claim.

24 So, going on to the next claim of Syntel, which is
25 misappropriation of confidential information claims.

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Syntel Mauritius also claims that Cognizant and TriZetto misappropriated Syntel's confidential information about its employees in order to hire them away from Syntel. The parties define confidential information under the agreement to mean information that a reasonable person would recognize as confidential. Matters of general knowledge in an industry are not confidential, and protection afforded to confidential information is lost if it is disclosed to the general public.

In order to establish the claims against Cognizant and TriZetto, Syntel Mauritius must prove by a preponderance of the evidence that they used Syntel Mauritius's confidential information for the purpose of securing a competitive advantage.

A competitive advantage has been found when confidential information allows a party to avoid costs, gives a party exclusive access to the information, or allows a party to prevent another party from reaping the full profits of its own information.

Syntel Mauritius alleges that TriZetto and/or Cognizant used this information to identify, target, recruit, and hire employees of Syntel Mauritius, Syntel Inc., and their affiliated companies that were deployed by Syntel Mauritius to provide services to TriZetto under the agreement for the purpose of securing a competitive advantage.

Because Syntel Mauritius and TriZetto were parties to

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1 the agreement, for Syntel Mauritius to prevail on its
2 misappropriation claim against TriZetto, Syntel must also prove
3 that TriZetto's use of Syntel Mauritius's confidential
4 information violated a duty that is independent from the
5 contractual duty under their agreement. An independent legal
6 duty must arise from the circumstances outside of the contract,
7 although it may be connected with and dependent upon the
8 contract. The focus is on whether a defendant violated a duty
9 imposed on the parties as a matter of social policy as opposed
10 to a duty that the parties agreed to in their contract.

11 You have seen evidence and heard argument concerning
12 the non-solicitation provision of the agreement, including
13 documents in which TriZetto questioned whether it or Cognizant
14 could hire Syntel's employees in light of that provision.
15 Prior to trial I determined that the non-solicitation provision
16 did not prohibit TriZetto or Cognizant from hiring Syntel
17 employees, and that neither TriZetto nor Cognizant violated
18 this provision of the agreement by hiring Syntel employees.
19 However, you may consider such evidence in your consideration
20 of Syntel's misappropriation claim that TriZetto provided
21 Syntel confidential employee information to Cognizant.

22 Iii. Syntel's intentional interference with contract
23 claim.

24 Syntel also brings a claim against Cognizant called
25 intentional interference with contract. Cognizant is a company

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1 that acquired TriZetto and is a competitor of Syntel. Syntel
2 claims that Cognizant intentionally caused TriZetto to breach
3 the agreement between Syntel Mauritius and TriZetto by inducing
4 TriZetto to use confidential information about Syntel employees
5 to hire them away from Syntel.

6 To prove this claim, Syntel must show the following by
7 a preponderance of the evidence:

- 8 1. Syntel Mauritius had a contract with TriZetto;
- 9 2. Cognizant knew about the contract;
- 10 3. Cognizant intentionally induced TriZetto to breach
the contract;
- 12 4. TriZetto did in fact breach the contract;
- 13 5. TriZetto would not have breached the contract if it
had not been for Cognizant's conduct; and
- 15 6. Syntel sustained damages as a result of TriZetto's
breach.

17 The first element again is not in dispute as the
18 agreement was a contract between Syntel Mauritius and TriZetto.
19 Syntel must prove that Cognizant knew about the agreement, but
20 it is not necessary that Cognizant knew about the agreement's
21 specific terms.

22 Syntel must also prove that Cognizant intentionally
23 induced TriZetto to breach the agreement. An act is
24 intentional if it's done deliberately and for the purpose of
25 inducing a party to a contract to breach it. An act induces a

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1 breach if it causes a party who otherwise would have complied
2 with the contract not to do so.

3 However, inducing a breach of contract is justified
4 when an entity that is responsible for protecting the interests
5 of another entity acts to protect those interests. If you find
6 that Cognizant had an economic interest in TriZetto, then
7 Syntel must prove that Cognizant acted illegally or with
8 malice.

9 iv. Syntel Inc.'s intentional interference with
10 contract relations.

11 Syntel Inc. makes claims that TriZetto and Cognizant
12 each intentionally and improperly interfered with the
13 employment contracts of five employees of Syntel Inc., which I
14 will call the employment contracts. That's the five contracts.
15 To establish this claim against TriZetto, Syntel Inc. must
16 prove the following six elements as applied to TriZetto.
17 Likewise, to prove the claim against Cognizant, Syntel must
18 prove the six elements as applied to Cognizant. Syntel Inc.
19 must prove each element by a preponderance of the evidence:

20 1. That Syntel Inc. had employment contracts with the
21 five employees at the time of the interference.

22 That TriZetto or Cognizant, depending on whom you are
23 considering

24 2. Knew of the contracts;

25 3. Intentionally interfered with the contracts;

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- 1 4. Improperly interfered with the contracts;
- 2 5. Caused Syntel Inc.'s employees to breach their
- 3 employment contracts; and
- 4 6. That Syntel was damaged as a result.

5 When I say that Syntel Inc. must prove that TriZetto
6 or Cognizant intentionally interfered with the employment
7 contracts, the third element, I mean that their primary, but
8 not necessarily sole, purpose was to cause Syntel Inc.'s
9 employees to breach their employment contract, or that they
10 acted knowing that their conduct was certain or substantially
11 certain to cause Syntel Inc.'s employees to breach their
12 employment contracts.

13 Improper interference, the fourth element, is conduct
14 that is one of the following: Fraudulent, unlawful, unethical
15 or unjustified under any circumstances.

16 A general comment about a doctrine called respondeat
17 superior. In deciding the issues in this case, keep in mind
18 that an employer's responsible for the act of its employee if
19 the act is in furtherance of the employer's business and is
20 within the scope of the employee's authority. An act is within
21 the scope of an employee's authority if it is performed while
22 the employee is engaged generally in the performance of his or
23 her assigned duties or if the act reasonably is necessary or
24 incidental to the employment. The employer need not have
25 authorized the specific act in question.

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1 So that discussion or statements that I just made
2 relates to the claims of the parties. Now I'm going to turn to
3 the issue of damages, which is money to be awarded to the
4 parties, if any.

5 So, first I am going to talk to you about compensatory
6 damages. If, and only if, you found that a party has proven by
7 a preponderance of the evidence its claims against another
8 party, then you must determine whether the prevailing party is
9 entitled to any damages and, if so, the amount.

10 The fact that I am instructing you on damages does not
11 mean that any party is entitled to recover damages. I am
12 expressing no opinion one way or the other. It is exclusively
13 your function to decide whether a party has proven its claims,
14 and I am instructing you on damages, if any, only so that you
15 will have guidance should you decide that a party has done so.

16 If you find by a preponderance of the evidence that a
17 party has proven one or more claims, you must then go on to
18 consider the question of compensatory damages for any such
19 claim. The purpose of compensatory damages is to award, as far
20 as possible, just and fair compensation for the loss, if any,
21 which you believe it actually sustained as a proximate result
22 of the other parties' misconduct. Damages must be determined
23 with reasonable certainty from the evidence presented.
24 Mathematical precision need not be shown, but you are not to
25 guess or speculate as to damages. You are to consider each

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1 type of compensatory damage for each claim and then determine
2 which form of compensatory damage is most appropriate, if any.

3 Compensatory damages are not intended to punish the
4 liable party. Compensatory damages measure fair and just
5 compensation, commensurate with the loss or injury sustained
6 from the wrongful act. Damages intended to punish the liable
7 party are known as punitive damages, which I will instruct you
8 on later.

9 There is also a general principle called mitigation of
10 damages. The law imposes on an injured person the duty to take
11 advantage of reasonable opportunities to reduce or minimize the
12 loss or damage that the party could have avoided with
13 reasonable effort. The duty to reduce or avoid damages arises
14 when the party becomes aware of the injury. If the injured
15 party made reasonable efforts to reduce or avoid its losses, it
16 does not matter if in hindsight another better means of
17 limiting the financial injury was possible.

18 A party seeking mitigation of damages bears the burden
19 of proving by a preponderance of the evidence that the other
20 party failed to use reasonable efforts to reduce or avoid its
21 losses and the amount of damages that could have been avoided.
22 For certain claims, if you find that a party failed to reduce
23 or avoid its damages with a particular amount, you should
24 reduce that party's recoverable damage by the amount of damage
25 that the party could have avoided through reasonable effort.

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1 There is also the issue of double recovery, and you'll
2 see two specific questions on the verdict form that relate to
3 this. I just highlight it for you.

4 As you've heard, the parties in this case are
5 asserting several claims and seeking damages for those claims.
6 However, even if you find a party liable for more than one
7 claim, you must not award damages in a manner that results in
8 double or multiple recoveries for the one single injury.

9 So, now let's talk about compensatory damages for
10 TriZetto's claims. First, the misappropriation of trade
11 secrets claims.

12 If, and only if, you have found that TriZetto has
13 proven by a preponderance of the evidence that Syntel
14 misappropriated any of TriZetto's trade secrets, then you must
15 determine whether TriZetto is entitled to any damages, and if
16 so, the amount.

17 There are several types of compensatory damages that
18 could be available to TriZetto for its trade secret
19 misappropriation claims. I will instruct you on each one
20 separately.

21 First one is lost profits. TriZetto seeks lost
22 profits for its claim that Syntel misappropriated trade
23 secrets. If you find that Syntel has misappropriated one or
24 more trade secrets under either New York or federal law, you
25 must determine the amount of lost profits for the

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1 misappropriated trade secrets TriZetto is entitled to recover.

2 In determining lost profits damages, you should determine what
3 additional profits TriZetto would have made, if any, had Syntel
4 not misappropriated the trade secret information.

5 To recover lost profits, TriZetto must prove:

6 1. A reasonable probability that if the
7 misappropriation had not occurred, TriZetto would have made
8 additional profit; and

9 2. The amount of that profit.

10 Second, the second kind of recovery is called unjust enrichment. TriZetto also seeks compensatory damages in the form of unjust enrichment for its claims that Syntel misappropriated trade secrets. Unjust enrichment is the amount that Syntel benefited as a result of any misappropriation.

15 One form of unjust enrichment can be measured by accounting for the infringer's profits earned by using the trade secrets, when such profits can be proven. An alternative form of unjust enrichment is called avoided costs. Avoided costs may be considered only for TriZetto's federal misappropriation claim, and not for its state misappropriation claim. Avoided costs are the amount that Syntel would have incurred to achieve the same result without the use of the appropriated trade secret.

24 If you find that TriZetto has proven by a preponderance of the evidence that it is entitled to Syntel's

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1 unjust enrichment damages in excess of TriZetto's actual loss,
2 you must deduct the cost and expenses, if any, that Syntel
3 proves by a preponderance of the evidence that Syntel incurred
4 related to that benefit. You may award damages for unjust
5 enrichment only to the extent that they were not taken into
6 account in computing TriZetto's actual loss.

7 And the third kind of damages on the trademark claim
8 is call reasonable royalty damages. As an alternative to lost
9 profits or unjust enrichment, you may award TriZetto damages
10 for trade secret misappropriation in the form of a reasonable
11 royalty. You may not award reasonable royalty damages to
12 TriZetto if you have decided to award lost profits or unjust
13 enrichment damages to TriZetto.

14 A reasonable royalty is the price that would be agreed
15 upon by the owner of the trade secret and the misappropriator
16 for use of the trade secret. You may award a royalty to cover
17 only the time period during which damages apply, which I will
18 discuss with you in a moment.

19 Some of the factors you may consider in determining
20 the amount of a reasonable royalty include:

21 1. Royalties, including as a portion of profits or
22 selling price, paid for the technology or comparable
23 technology, including to the owner;

24 2. The nature and scope and term of the
25 misappropriator's use of the trade secret and the commercial

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1 relationship between the parties;

2 3. The total value of the trade secret to the owner,
3 including its development costs, if any;

4 4. The time and effort that would have been required
5 before the misappropriator could have acquired or likely
6 acquired the same or equivalent information through proper
7 means;

8 5. The benefits of the technology, its lifespan, and
9 the effect of the technology;

10 6. The profitability of the product made under the
11 technology, and the extent and value of the use of the
12 technology by the misappropriator.

13 This is not intended as an exclusive list of the
14 factors which you may consider, although it will give you the
15 idea of the kind of things to consider in setting a reasonable
16 royalty.

17 I mentioned time frame. You will be asked to
18 determine TriZetto's damages for misappropriation of trade
19 secrets under both New York and federal law. Under New York
20 law, you are to determine damages from January 1, 2012 to
21 October 18, 2020. Under federal law, the Defend Trade Secrets
22 Act you are to determine damages from May 11, 2016 to
23 October 18, 2020.

24 If you decide to make an award of damages on either or
25 both of TriZetto's trade secret claims, please refer to the

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mitigation of damages instruction above to determine if the amount of damages you have determined should be reduced.

Now let's turn to the copyright infringement claim, which is TriZetto's claim against Syntel. If, and only if, you have found that TriZetto has proven by a preponderance of the evidence that Syntel infringed one or more of TriZetto's three copyrighted works at issue, then you must determine the amount of damages TriZetto may recover.

You must determine the amount of actual damages, if any, suffered as a result of the copyright infringement, and any profits of Syntel Mauritius and/or Syntel Inc. that are attributable to the infringement that are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to provide its deductible expenses and the elements of profit attributable to facts other than the copyrighted work.

Actual damages. One way to measure actual damages is by determining TriZetto's lost profits, if any, by reason of the infringing conduct. Another way to measure actual damages is by determining a reasonable royalty. A reasonable royalty is the fair market value of a license covering the infringing use, which is the reasonable license fee on which a willing buyer and a willing seller would have agreed for use of the

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1 copyrighted work.

2 Profits of the infringer. To the extent not taken
3 into account in computing actual damages, if TriZetto proves
4 infringement of one or more of the three TriZetto works,
5 TriZetto is entitled to recover the profits that Syntel made
6 through October 18, 2020, because of Syntel's infringement of
7 one or more of the registered TriZetto works. Syntel's profits
8 are revenues that Syntel made because of the infringement,
9 minus Syntel's expenses in providing its services. TriZetto
10 must prove Syntel's revenues and a causal relationship between
11 the infringement and those revenues. Syntel must prove its own
12 expenses and any portion of its profits that resulted from
13 factors, other than infringement of one or more of TriZetto's
14 works. In other words, only the portion of Syntel's profits
15 that are attributable to the infringement of the particular
16 TriZetto work and not to other factors may be considered for
17 recovery.

18 Again, if you decide to make an award of damages on
19 TriZetto's copyright claim, please refer to the mitigation of
20 damages instruction above to determine if the amount of damages
21 you have determined should be reduced.

22 So, we've now talked about potential damages that
23 could be awarded to TriZetto, let's now talk about potential
24 damages that could be awarded to Syntel, first on its breach of
25 contract claim.

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If, and only if, Syntel Mauritius has proved all the elements of breach of contract claim, then you must determine the amount of damages, if any, Syntel Mauritius may recover. Syntel Mauritius seeks lost profits for its claim that TriZetto breached the agreement's confidentiality provision. To determine lost profits damages, you should determine what profits Syntel Mauritius would have made had TriZetto not breached the agreement. To recover lost profits, Syntel Mauritius must prove by a preponderance of the evidence:

1. A reasonable probability that if the breach of the agreement's confidentiality provision had not occurred, Syntel Mauritius would have made an additional profit;

2. The amount of that profit.

And that's it. Only those two things.

If you decide to make an award of damages on Syntel Mauritius's breach of contract claim, please refer to the mitigation of damages instruction above to determine if the amount of damages you have determined should be reduced.

Next, or second is the intentional interference with contract claim. If, and only if, you have found that Syntel has proven by a preponderance of the evidence that Cognizant intentionally interfered with the agreement, then Syntel may recover damages.

In determining lost profits damages, you should determine what profits Syntel would have made, if any, had

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1 Cognizant not tortiously interfered with the contract.

2 To recover lost profits Syntel must prove:

3 1. A reasonable probability that if the tortious
4 interference had not occurred, Syntel would have made
5 additional profits; and

6 2. The amount of that profit.

7 Instead of lost profits, you may award direct damages
8 stemming from the alleged breach. In determining direct
9 damages, you may look at the costs incurred rather than the
10 profits lost as a result of the breach.

11 Then the next claim, misappropriation of confidential
12 information claims. If, and only if, you have found that
13 Syntel Mauritius has proven by a preponderance of the evidence
14 that TriZetto/Cognizant misappropriated confidential
15 information, then Syntel Mauritius may recover damages against
16 TriZetto/Cognizant.

17 In determining lost profits damages, you should
18 determine what profits Syntel Mauritius would have made, if
19 any, had the other party not misappropriated the information.
20 To recover lost profits, Syntel Mauritius must prove:

21 1. A reasonable probably that if the misappropriation
22 had not occurred, Syntel Mauritius would have made additional
23 profit; and

24 2. The amount of that profit.

25 Unjust enrichment is the amount that TriZetto and/or

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1 Cognizant benefited as a result of any misappropriation. If
2 you find that Syntel Mauritius has proved by a preponderance of
3 the evidence that it is entitled to TriZetto and/or Cognizant's
4 unjust enrichment damages in excess of Syntel Mauritius's
5 actual loss, you must deduct the costs and expenses that
6 TriZetto and/or Cognizant proved by a preponderance of the
7 evidence that they incurred related to that benefit. You may
8 award unjust enrichment damages only to the extent that they
9 were not taken into account in computing Syntel Mauritius's
10 actual loss.

11 The next claim, the last one, intentional interference
12 with contractual relations. If, and only if, you found that
13 Syntel Inc. has proved by a preponderance of the evidence that
14 TriZetto and/or Cognizant intentionally interfered with the
15 five employment contracts at issue, then Syntel Inc. may
16 recover damages against TriZetto and/or Cognizant.

17 In determining lost profits damages, you should
18 determine what profits Syntel Inc. would have made, if any, had
19 the other party not interfered with the employment agreements.

20 To recover lost profits, Syntel Inc. must prove:

21 1. A reasonable probability that if the interference
22 had not occurred, Syntel Inc. would have made additional
23 profits; and

24 2. The amount of that profit.

25 So that concludes the discussion of what are called

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compensatory damages. Let me now discuss with you punitive damages. In contrast to compensatory damages, punitive damages are intended to punish and deter the wrongdoer and others from committing similar acts in the future. If you find that TriZetto is entitled to compensatory damages for misappropriation of trade secrets under New York or federal law, or that Syntel is entitled to compensatory damages for misappropriation of confidential information or intentional interference with contract against Cognizant, then you may, but are not required to, award punitive damages in addition to awarding damages to compensate the injured party for its injuries. You may not award punitive damages for TriZetto's federal copyright claim, Syntel's breach of contract claim, or Syntel's intentional interference with contractual relations, the one regarding five employment contracts.

To award punitive damages, you must find that a party has proven by a preponderance of the evidence the other party's conduct was malicious and wanton, and not merely unreasonable. Meaning that in committing the act, the other party acted with deliberate intent to injure or interfere with the party's rights and with conscious indifference and utter disregard of its effect on the safety and rights of others.

Punitive damages may be awarded against an employer because of an act by its employee only if you find:

1. The employer authorized the doing and the manner

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1 of the act; or

2 2. The employee was unfit and the employer was
3 reckless in employing him or her; or

4 3. The employee was employed in a managerial capacity
5 and was acting in the scope of his or her employment; or

6 4. The employer or manager of the employer ratified
7 or approved the act.

8 In determining whether an employee is acting in a
9 managerial capacity, you should consider the employee's
10 authority and discretion to make decisions, and not only the
11 employee's title.

12 Only if you decide to award punitive damages, you must
13 then determine the amount of damages using sound reason. It
14 must not reflect bias, prejudice or sympathy toward any party,
15 and you should consider the following factors for each
16 wrongdoer in determining the amount:

17 1. The nature and reprehensibility of what the
18 wrongdoer did. In considering the amount of punitive damages
19 to award, you should weigh this factor heavily.

20 2. The actual and potential harm caused by the
21 conduct. The amount of punitive damages that you award must be
22 both reasonable and proportionate to the actual and potential
23 harm suffered that the wrongdoer knew was likely to occur, and
24 to the compensatory damages you have awarded the claimant.

25 3. You may also consider the financial condition of

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1 the party liable for wrongdoing.

2 For TriZetto's federal trade secret misappropriation
3 claim, if you find that Syntel acted willfully and maliciously,
4 you may, but need not, award TriZetto an amount of punitive
5 damages up to two times the amount of compensatory damages you
6 award TriZetto for trade secret misappropriation for the time
7 during which Syntel acted willfully and maliciously. If you
8 find that punitive damages are appropriate for this claim, you
9 must use sound reasoning in setting the amount of those damages
10 and consider the same factors as above.

11 And let me just say again, perhaps I don't need to.
12 I'm not suggesting by instructing you on punitive damages that
13 you should award punitive damages or anyone is entitled to
14 them. I'm simply instructing you in case you decide that's the
15 case.

16 Let me now talk to you about sort of the final
17 category. We've talked about the claims, we've talked about
18 the damages. Now let me tell you about defenses.

19 First, Syntel's affirmative defenses. If you find
20 that TriZetto has proved any of its claims against Syntel, you
21 should then consider three affirmative defenses that Syntel
22 asserts: Laches, waivers and estoppel.

23 Laches. To establish laches, Syntel must prove by a
24 preponderance of the evidence that TriZetto delayed filing the
25 lawsuit for an unreasonably long and inexcusable period of

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1 time, and Syntel has been or will be prejudiced in a
2 significant way due to TriZetto's delay in filing the lawsuit.
3 Unreasonable delay means an unreasonable lack of diligence
4 under the circumstances in initiating the action. Prejudice is
5 harm or injury that results from a party's actions.

6 Second, waiver. To establish waiver, Syntel must
7 prove that TriZetto knowingly and intentionally abandoned its
8 right to sue Syntel for misappropriation of trade secrets or
9 copyright infringement. Syntel must prove waiver for
10 TriZetto's claims of copyright infringement and for
11 misappropriation of trade secrets under the Defend Trade
12 Secrets Act by a preponderance of the evidence, the standard of
13 proof that I have already explained. Syntel must prove waiver
14 for TriZetto's claim for misappropriation of trade secrets
15 under New York law by a different standard, that is clear proof
16 that there was a voluntary and intentional relinquishment of a
17 known and otherwise enforceable right.

18 And the final defense is estoppel. To establish
19 estoppel, Syntel must prove that:

20 TriZetto misled Syntel to believe TriZetto would not
21 claim that Syntel misappropriated trade secrets or infringed
22 copyrights;

23 2. Syntel relied on this; and

24 3. As a result, Syntel will be materially harmed due
25 to such a claim by TriZetto.

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Syntel must prove each element of estoppel for TriZetto's claims of copyright infringement and for misappropriation of trade secrets under the Defend Trade Secrets Act by a preponderance of the evidence. Syntel must prove estoppel for TriZetto's claims for misappropriation of trade secrets under New York law by clear and convincing evidence, which means evidence that satisfies you that each element of estoppel was highly probable.

Finally, unclean hands is a principle that both sides are asserting. Unclean hands is a principle that prohibits a party from obtaining certain relief if that party has committed some unconscionable act that is directly related to the subject matter in litigation and has injured the other party. You will be asked whether either party has shown by a preponderance of the evidence that the adverse party acted with unclean hands.

So that is the end of the instructions. Apologies, ladies and gentlemen, that they are so long.

With these instructions in mind, you're now going to hear closing arguments from the lawyers. And I'll just remind you that what the lawyers say is not evidence, because they are not witnesses. But what they say to you in their closing arguments is intended to help you understand the evidence and reach your verdict. So please pay close attention to their arguments.

And my plan is that we will hear the first summation,

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Summation - Mr. De Vries

1 we'll take a very short bathroom break at that point, we'll
2 hear the second summation, and then we'll hear very brief
3 rebuttal. And I need something to wipe this down.

4 MR. DE VRIES: Your Honor, may I approach the podium?

5 THE COURT: You may.

6 MR. DE VRIES: Your Honor, may I remove my mask?

7 THE COURT: You may.

8 MR. DE VRIES: Thank you, your Honor. And I'd like to
9 reserve 10 minutes of my hour, which I understand is the
10 maximum time for my rebuttal.

11 THE COURT: Yes.

12 MR. DE VRIES: Thank you. Mr. Thomas, are we
13 generally ready?

14 Your Honor, may I proceed?

15 THE COURT: You may.

16 MR. DE VRIES: Good afternoon, members of the jury. I
17 want to start again where I started the trial, and that is to
18 thank all of you for the time and the sacrifice that you've
19 made in performing your service in this trial. I know I speak
20 on behalf of everyone here that it is deeply meaningful to all
21 of us, and we appreciate you helping administer justice in this
22 case.

23 The evidence is in, and the time has come for you to
24 make the decision here. And I understand that her Honor has
25 instructed you that that decision is to be based on the

Kaq3syn5

Summation - Mr. De Vries

1 evidence, not on the arguments that I or any of the other
2 attorneys make. And you'll have an opportunity to take a look
3 at the evidence in the jury room. Anything that you want will
4 be available to you on a computer, and I encourage you to do
5 that, to look at each of the items of evidence that we've
6 talked about.

7 This has been a long trial, and I don't have the
8 ability to walk through every piece of evidence here. But as I
9 said, and I will have on my slides particular exhibit numbers
10 that you can go to look at to see what I am talking about and
11 examine the documents and other evidence in detail.

12 With the evidence in, we've shown what we set out to
13 show, and I don't think the same can be said for Syntel.

14 We've shown that there was a betrayal of trust. My
15 client paid an awful lot of money to Syntel, for its
16 assistance, over \$100 million, and it trusted Syntel with its
17 trade secrets. But for only one purpose, and that was to help
18 TriZetto.

19 Syntel betrayed that trust by taking the trade
20 secrets, and using them for all types of other purposes,
21 including to make other tools that it went out and told our
22 customers, our joint customers and in some cases other
23 customers, belong to it.

24 And over the course of this case, which has been
25 nearly six years, this lawsuit, and this is going to be the end

Kaq3syn5

Summation - Mr. De Vries

of it for this part of the case, the story that Syntel has told, it's kept changing. Its excuses have changed constantly. First, it said it didn't do it, for years. But we found more information and more information, and with the help of the neutral forensic examiner, we showed that that was false.

And so what did they do? They came up with a new story and another new story. And the stories that you've seen presented now are that they did do it, but it was okay. Either because they got it from United Health Group, or because it's just competition and that 2012 amendment made competition okay.

But those new excuses, the new stories for why they did what they did, are no more believable than the first ones.

And the last thing I'll say before I present my slides is that the evidence is also clear that Syntel refuses to take responsibility for what it's done. You heard Mr. Moore, the top attorney at Syntel, say that he didn't testify about a single thing they've done to stop using the trade secrets, to take the trade secrets out of their files, to do anything whatsoever to respect my client's hard earned, intellectual property rights. That the law of the United States protects.

They won't listen to us, but after six years of litigation, there is someone they have to listen to, and that is you.

Mr. Thomas, can I get my slides, please. Thank you.

In the opening statement, Syntel said that they

Kaq3syn5

Summation - Mr. De Vries

1 weren't stealing the information, and that this is a case about
2 a relationship gone bad.

3 But you heard her Honor instruct you during trial that
4 Syntel misappropriated TriZetto's test cases and automation
5 scripts. The misappropriation under the law involves an
6 unlawful taking or use of a trade secret. Here, so long as
7 we're able to prove that these test cases and automation
8 scripts are trade secrets -- which they clearly are, you can
9 see it in document after document after document from Syntel
10 that they are highly valuable -- then we have proved our claims
11 of trade secret misappropriation under federal and New York
12 law.

13 Her Honor also instructed you that there is no
14 evidence that Syntel independently developed TriZetto's
15 platform management tool trade secret. That involves the Data
16 Dictionary, the Step-up Probe, and also the test cases and
17 automation scripts. And again, we provided unrebutted evidence
18 that each of those tools, that to this day Syntel continues to
19 sell, were unlawfully copied and based on my client's trade
20 secrets.

21 During questioning of our technical expert
22 Dr. Bergeron, counsel for Syntel asked:

23 "Q. And there is no dispute in this case that Syntel used
24 TriZetto materials of the type that you opine are trade
25 secrets, correct?

KaQ3syn5

Summation - Mr. De Vries

1 "A. You are asking me if there is no what dispute?

2 "Q. I don't think anyone in the room disputes that Syntel used
3 certain TriZetto material, confidential material."

4 While that may be the case as of the middle of this
5 trial, for the last six years, that has not been the story that
6 we've heard from Syntel.

7 And there is no question that the use of my client's
8 trade secrets was wrong. And all you have to do is look at the
9 testimony from Mr. Murli Reddy from this trial where he was
10 asked if someone on your side, if someone from Syntel stood up
11 and said that under the amended Master Services Agreement, this
12 is the amendment, it was okay for you to use TriZetto's trade
13 secrets to compete against TriZetto, that would be flat wrong,
14 right? And he answered it would be flat wrong, as long as we
15 take something that we got from TriZetto and use it.

16 And then he testified, upon being shown his
17 deposition, that when Syntel was competing against TriZetto,
18 Syntel was not allowed to use TriZetto's proprietary,
19 confidential, trade secret or copyrighted information in that
20 effort, right? And his answer was yes.

21 This is the evidence that I respectfully submit should
22 guide you in deciding whether the latest excuses from Syntel
23 are correct or not.

24 And finally, Syntel's top attorney, Mr. Dan Moore,
25 when I asked him whether stealing trade secrets is a

Kaq3syn5

Summation - Mr. De Vries

1 relationship gone wrong, he agreed that they're not. That
2 stealing trade secrets is not a relationship gone wrong.

3 Now, we showed you a lot of evidence that shows the
4 misappropriation of the trade secrets and the copying of the
5 copyrighted materials. The key Syntel employees who were on
6 those materials are listed here. Ankur Chadha, he is a name
7 who you've seen a lot. Sandeep Sinha and many others. And
8 these are senior managers at Syntel. Mr. Chadha was head of
9 the PCT team. Mr. Sinha, the Facets architect at Syntel.

10 But you didn't see a single one of these witnesses
11 come to provide live testimony to you in this trial, to tell
12 you they thought it was okay to take my client's trade secrets
13 and use them. To tell you that they believed that they had
14 some kind of right to take the trade secrets and use them to
15 build competing tools, or that they got everything from UHG.
16 Those are attorney arguments; that's not evidence from the
17 witnesses who didn't come.

18 (Continued on next page)

KAQTSYN6

Summation - Mr. De Vries

1 MR. DE VRIES: And as you can see from DTX 1539, this
2 is a document you can look at, it says Mr. Chadha's links in
3 profile, I believe it was printed a week ago, he works for Atos
4 Syntel today, in San Francisco. If he wanted to testify at
5 trial and to tell you what the answer was, he had every ability
6 to do that, and it has to tell you something that none of those
7 witnesses came to face you and explain what they have done.

8 There's another big empty chair here that is very
9 unusual. We presented through Dr. Bergeron substantial
10 evidence of exactly how it was that Syntel copied and used the
11 trade secrets and the copyrights, and Syntel did not bring a
12 technical expert to say that anything that Dr. Bergeron said
13 was wrong. It is unrebutted technical testimony.

14 And the witnesses that they did bring, they did not
15 tell you a different story. Mr. Reddy was asked: We are not
16 going to hear you say today that those tools and accelerators
17 came from anywhere else but TriZetto.

18 And he said: I'm not going to say that.

19 Very similar question to Mr. Mehta: You are not
20 providing any evidence or testimony that the tools, the Step Up
21 Probe, the Data Dictionary or the 3,000 test cases or 500
22 automation scripts, came from anywhere other than TriZetto,
23 correct?

24 No, I'm not providing that testimony.

25 Now this is important stuff. You heard from Mike

KAQTSYN6

Summation - Mr. De Vries

1 Noonan, the first witness in the trial, who spent over 20 years
2 of his life as a senior software engineer developing the
3 Facets-related trade secrets. And this software, although you
4 never heard about it before this trial, very likely, is one of
5 the most important, if not the most important healthcare
6 administration software in the United States. As you heard, it
7 covers approximately 170 million lives.

8 And TriZetto trusted Syntel with that information, as
9 Mr. Noonan explained. And they did didn't do it for free.
10 Syntel received over \$100 million from TriZetto for the work
11 that it did. And in return, in addition to providing the
12 services from its -- the staffing services from its employees,
13 it agreed to keep that information confidential, and as their
14 witnesses told you, to use it only to help TriZetto.

15 But that's not what happened. There are a series of
16 documents that you have seen in this trial that show that,
17 unbeknownst to TriZetto, to my client, years before the merger
18 with Cognizant and the termination and the few months dispute
19 about 84 employees that you heard a lot about from Syntel, that
20 there was a plan, and that plan from the very beginning was
21 focused on tools and accelerators.

22 And you can take a look at this document, it's DTX 83,
23 there are the notes. On the first page you can see that the
24 plan that Syntel undertook was to build the tools and
25 accelerators, and by 2015 to go into all-out war with TriZetto

KAQTSYN6

Summation - Mr. De Vries

1 that was built on an arsenal of tools and accelerators it
2 called its differentiators.

3 In that same document, there is a drawing about the
4 \$500 million total addressable market. And Mr. Reddy admitted
5 that that drawing was a target. And who did it target? Well,
6 first it targeted Cognizant, who at the time was separate, but
7 then TriZetto, first its troubled accounts, then its direct
8 accounts. That was the purpose of the plan.

9 And it's not in just this one document. Another
10 document from 2012, DTX 160, it says that there's a focus on
11 leveraging tools, that they're going to create differentiated
12 tools, the impact analyzer, the Data Dictionary, and that they
13 were going to do this using the work that they were performing
14 for my client as a Trojan horse. This is a document that until
15 we were in the middle this litigation, my client never got to
16 see.

17 And by the time we get to 2014, years, by that point,
18 into the plan, they're still focused on Step Up, that's that
19 Step Up Probe, the accelerators. Mr. Noonan explained those
20 are the tools. They call that their IP, and their plan is to
21 use those technologies for their billion dollar goal and their
22 hundred million dollar per year goal.

23 Now Mr. Reddy said that they never implemented the
24 plan. But I respectfully submit to you all that if you look at
25 the evidence, there is no doubt that the plan was implemented.

KAQTSYN6

Summation - Mr. De Vries

1 This is one of the documents, it's DTX 149 that
2 Mr. Reddy wrote in October of 2014. It talks about
3 accelerators and tool kits. It talks about being aggressive
4 with UHG, going for the kill for UHG. And then there's a lot
5 of combat terminology that you may remember. And one thing
6 that Syntel said is well, the discussion about combat and going
7 to war, that's really about not wanting to lose people. But
8 look carefully at this document. It talks very clearly about
9 accelerators and tool kits, and what it says is you're going to
10 go for the kill with UHG.

11 I think another thing Syntel said, well, this
12 particular document doesn't talk about the trade secret, but
13 over and over and over again the internal documents at Syntel
14 leave no doubt that what Syntel did was take the trade secrets
15 from my client and use them to build the tools. This is DTX
16 100. I encourage you to look at it. This is an internal
17 Syntel document that says I got the TriZetto supply Data
18 Dictionary, it put it on the PCT-shared drive. This is a link
19 to that drive. The link has in its name "tools," and then a
20 link to TriZetto Data Dictionary source code.

21 And what did Dr. Bergeron explain? He said he looked
22 at all the source code for the party's products, the Data
23 Dictionary from my product and the renamed D2 Data Dictionary,
24 the one that Syntel says it developed. And the source code for
25 the heart of that product was exactly the same, function after

KAQTSYN6

Summation - Mr. De Vries

1 function, value after value, line after line and page after
2 page, it is exactly the same. There is no explanation for that
3 other than that they took our source code, they copied it into
4 their tool, and then they told the world that they developed a
5 D2 Data Dictionary. That testimony is entirely unrebutted. No
6 one came to say that that was wrong.

7 The same is true for the Step Up Probe. Please create
8 rule sheet for our IA tool, that's the impact analyzer tool,
9 the Step Up Probe, and they say base it on the attached
10 spreadsheet. If you open up that spreadsheet, I encourage you
11 to, DTX 96, and look at the print preview mode, you will see it
12 says TriZetto confidential and proprietary.

13 And test cases and automation scripts, I remind you of
14 her Honor's instructions. Here at the top is a test case that
15 was found in their files. It says right on there, TriZetto
16 confidential and proprietary. It wasn't the only one, hundreds
17 of these were found in their files. What did they do?

18 They went and told the customers this was their tool.
19 They called it Factory, like they renamed the Data Dictionary
20 the D2, here they called it Factory, and they told the
21 customers that that's why they should go with them.

22 What about the software? The software trade secrets?
23 They downloaded in very short time frames EXE file after EXE
24 file after EXE file to create an internal secret repository of
25 our software on their system to use with other customers.

KAQTSYN6

Summation - Mr. De Vries

1 And the manuals, you've seen this document a lot, but
2 DTX 5 explains, there's been a lot of dispute about who
3 downloaded what and when and where they -- when they went to
4 which company, but all you have to do is focus on this email.
5 Mr. Sinha says to Mr. Mehta and Mr. Chadha that in the next two
6 months to build Syntel capabilities very strong around TriZetto
7 products, because once we're out from TriZetto, we will not be
8 having access to their products, documentations and manuals.
9 And what you saw in the earlier slide in DTX 100 is that they
10 created on that PCT-shared drive a repository of all of these
11 materials that they took so that they could use them with other
12 customers.

13 And then months later, you can see that Mr. Chadha is
14 asking: Send me the list of exact T dollar sign Z manuals that
15 you need. He's asking what manuals do you need? You should go
16 look at this document. And his co-worker in the PCT group,
17 which the testimony establishes was never supposed to it have
18 these materials, says we were looking at the following manuals
19 and there's a whole list of the trade secret guides that's
20 coming out of their internal repository.

21 So what did they say? This is where the changing
22 stories comes in. In 2018, two years ago, little bit more
23 because this was in February, we asked Mr. Chadha: Have you
24 ever had access to TriZetto's information about its products?
25 No.

KAQTSYN6

Summation - Mr. De Vries

1 Have you ever had any access to any TriZetto
2 information? Not that I know of.

3 Well, we got these documents that Mr. Chadha sent,
4 wrote, send me the list of TriZetto manuals.

5 Here's another one that he's copied on: I got the
6 TriZetto supplied Data Dictionary.

7 I will leave it to you to conclude, but there is a
8 complete disconnect between this testimony and the written
9 evidence.

10 And it happened over and over again. We asked
11 Mr. Chadha: Are you aware of anyone on the PCT team using any
12 of TriZetto's materials to carry out their work? Again, to the
13 best of my knowledge, he testified under oath, I don't know of
14 anyone who used TriZetto material.

15 But years earlier he was on an email that says: I got
16 the TriZetto supply Data Dictionary, the same as placed on
17 PCT-share drive.

18 That was their story then.

19 What about Mr. Sinha? He's another current employee
20 of theirs who you saw by deposition but not on trial, and he
21 was asked: Does Syntel have a tool to analyze the impact of
22 the upgrade on custom code? I don't know.

23 What is the Syntel step up tool kit? I don't know.

24 So in all your work at Syntel you never heard of the
25 Step Up Probe being used to analyze the impact on custom code

KAQTSYN6

Summation - Mr. De Vries

1 upgrade? I don't remember.

2 But he wrote these emails on the right, DTX 95 and --
3 sorry, I think DTX 80, I will check that. And Mr. Sinha says:
4 Please create the rule sheet for our IA tool.

5 And the second one: We know that current Step Up tool
6 rule sheet is designed to work for these places. Please run
7 Step Up with new rule sheet on UHG inventory.

8 But he couldn't remember at his deposition whether in
9 all of his work at Syntel he ever heard of the Step Up Probe.
10 He said he didn't remember.

11 And this was a declaration from another employee of
12 Syntel, this time from 2017. And Ms. Muthuraman said that
13 Syntel never possessed a repository of 3,000 plus Facets test
14 cases and 500 plus Facets automation scripts. That was
15 declared under penalty of perjury to be correct. But as the
16 Court instructed you, I instructed you during the trial, that
17 Syntel misappropriated TriZetto's test cases and automation
18 scripts.

19 Now I mentioned the neutral forensic examiner, and I
20 think that's because, in part, it helps to explain the change
21 in story. The neutral forensic examiner found additional
22 TriZetto documents at Syntel. He found ongoing movement and
23 use of those documents in 2017. And hundreds of files that
24 were deleted in the middle of this case right as we were asking
25 these people these questions in 2017. You can look at it, DTX

KAQTSYN6

Summation - Mr. De Vries

1 245. And he found this additional information.

2 And I know there's been a lot of talk about this, but
3 you saw this deposition, the Syntel witness explained when
4 asked: Did you testimony the forensic examiner there was a
5 store room of TriZetto assets that were available? Answer:
6 No, I did not.

7 And I know you've heard a lot of discussion between
8 the attorneys and the experts about this, I encourage you to
9 focus on the evidence and what it shows when considering these
10 issues.

11 So what are the new excuses now that they, I think,
12 admit that they used all the trade secrets? Well, now they say
13 they were using information that they got fair and square from
14 UnitedHealth Group, from UHG. That's what was going on. Is
15 that true? No. How do you know it? Because they were taking
16 our trade secrets that they had been using.

17 You heard Mr. Moore, in 2012 is when they started
18 using the tools, years before United. And they said that they
19 came to UHG and said our tools, the Step Up Probe. You can see
20 it there, Factory, DT Data Dictionary, this is in DTX 78, they
21 were offering the trade secrets to United, not vice versa.

22 And we asked Mr. Mehta about it: If they came from
23 TriZetto, you would agree it wouldn't have been fair for to you
24 tell UHG that they were Syntel's tools, right? I would agree,
25 sir, yeah.

KAQTSYN6

Summation - Mr. De Vries

1 And that's right. It wasn't fair.

2 And it wasn't just UHG. DTX 149 is another important
3 document. Syntel knew that because it had taken my client's
4 trade secrets that by 2014, when Cognizant acquired TriZetto,
5 it believed there were no other alternatives. And why?
6 Because we have accelerators and tool kits. That's what they
7 were telling the clients. These are not materials they got
8 from the clients, they said these are ours, we got them, we're
9 the only other ones who have them except for the ones who came
10 up with them, and that that's why there were no other
11 alternatives.

12 So there's the other new story that, as far as I could
13 tell, they came up with at trial, and it's that this 2012
14 amendment somehow meant that they could take my client's trade
15 secrets and copyrights and do whatever they wanted with them.
16 That is flat wrong. And you don't have to take it from me,
17 that was Mr. Reddy's words. So whatever argument you hear on
18 this issue, I would encourage you to remember what they said
19 under oath in this trial, that if someone stands up and said
20 that under the MSA, as amended, it was okay for you to use
21 TriZetto's trade secrets to compete, it would be flat wrong.
22 Using our trade secrets to compete is unfair competition, not
23 competition. Nothing about this amendment or about competition
24 in general allows them to use the trade secrets.

25 There's another very important part of competition

KAQTSYN6

Summation - Mr. De Vries

1 that is protected by the IP laws of this country, and that is
2 if intellectual property like trade secrets and copyrights are
3 not protected, companies like TriZetto, who invested over half
4 a billion dollars in creating these, they will stop doing it.
5 They will stop making those investments to create the
6 intellectual property. And so yes, that means that they get to
7 own what they created. that's what the law provides, and no
8 amount of competition and argument that low costs are good can
9 overcome that.

10 So what about today? Well, they're still doing it.
11 They're advertising right now on their website sustained
12 investments, IP based solutions, tools and accelerators.
13 They're still saying it in 2020. Those weren't their
14 investments, those were TriZetto's investments. The Step Up
15 Probe, Factory, D2 Data Generator, those were all taken, but
16 they're still advertising them.

17 And they touted their investments in their acquisition
18 with Atos. When Atos purchased Syntel in 2018, in the middle
19 of this lawsuit, two years ago, Syntel was still saying our
20 investments in high-impact domain-led services and intellectual
21 property, that's one of the reasons for this investment that
22 was made. But again, those are my client's investments.

23 And so finally, then I will get into the claims, I had
24 a chance to ask Mr. Moore about what they had done about my
25 client's trade secrets and copyrights. I asked: You did not

KAQTSYN6

Summation - Mr. De Vries

1 testify about any steps that your company took to stop using
2 TriZetto's trade secrets. That's correct.

3 You did not identify any steps in your testimony that
4 Syntel took to remove TriZetto's trade secrets and copyrighted
5 materials from its files. That is correct.

6 You didn't testify about any steps that Syntel took to
7 redesign any of the products to stop using my client's trade
8 secrets and copyrights. That's correct.

9 And finally I asked him: You did not testify about
10 any action that your company took whatsoever to take
11 responsibility for what it's done with my client's intellectual
12 property. And he very candidly said: I agree with that.

13 And you heard him just this morning, he had an
14 opportunity it come up after I finished asking questions and he
15 could have said we actually did, we do take responsibility, I
16 forgot to mention it before, we do respect the intellectual
17 property laws, we're going to stop, we have a plan in place.
18 You heard nothing like that. They will not take
19 responsibility. They take no accountability for what they have
20 done. And frankly, it is you who has the decision to hold them
21 accountable.

22 And so I think that what you will see is that the
23 bedrock facts that we set out to prove at the beginning of this
24 trial, each and every one of them we have proved by the
25 evidence, not through our arguments, but through the evidence.

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KAQTSYN6

Summation - Mr. De Vries

1 So let's talk about the claims. Trade secret
2 misappropriation. Some of this is undisputed. I don't think
3 there's any dispute that TriZetto owns these materials.
4 There's a dispute about whether the information is a trade
5 secret, and also whether Syntel used the trade secret in a way
6 that is prohibited.

7 They clearly did. They used the trade secrets. It's
8 apparently no longer disputed. They didn't have an expert come
9 and say they didn't. And they did it in violation of a duty to
10 maintain the secrecy of the trade secret, their agreement with
11 us.

12 And then this last factor is not disputed. You have
13 heard lots of evidence about all of the measures that TriZetto
14 takes to protect its trade secrets. It marks these documents
15 time and time and time again as trade secret property, trade
16 secret property, trade secret information. They testified
17 about -- Mr. Noonan and Mr. Sanders testified about computer
18 security, physical security, limited access control, only
19 certain people could see certain materials for certain
20 purposes. That's the exactly what a trade secret is.

21 And some of the trade secrets are shared on a
22 need-to-know basis with certain people as customers. But you
23 heard that all companies have to sign a confidentiality
24 agreement before they could access that. That's what
25 Mr. Sanders explained. And as her Honor just instructed you,

KAQTSYN6

Summation - Mr. De Vries

1 "secret" means that the information was known substantially
2 only by TriZetto or others who are obligated to keep the
3 information secret.

4 And one other thing, I think you will hear from Syntel
5 that maybe these were not trade secrets because they weren't
6 available. They're not sure that they can reuse them enough,
7 that they're not particularly important. But ask yourself, if
8 they're not important, why do all of their internal documents
9 say that the tools and accelerators are the most important
10 thing, that that makes Syntel the only alternative to us in the
11 market, that the Factory repository test cases and automation
12 scripts is so important that it is still advertised on the
13 website today. That is completely contrary to any argument
14 that these are not valuable as trade secrets.

15 And we provided extensive, unrebutted use of each of
16 the categories, the tools, the software, the guides and
17 manuals. As I mentioned, it appears that this is no longer
18 disputed by them, and they had no expert come and say that
19 there was a dispute.

20 Her Honor instructed you that during the trial Syntel
21 misappropriated TriZetto's test cases and automation scripts,
22 and that there's no evidence that Syntel independently
23 developed the platform tool trade secrets.

24 And there's another very important point, that is the
25 Defend Trade Secrets Act. That was enacted by Congress in the

KAQTSYN6

Summation - Mr. De Vries

1 middle of 2016. So I want to show you multiple pieces of
2 evidence that leave absolutely no doubt that the use of the
3 trade secrets, the unauthorized use by Syntel occurred after
4 that date. So for the tools, I asked Mr. Moore when I got to
5 question him last week: In 2018, Syntel continued to use tools
6 in connection with providing Facets services at that time. And
7 he answered: That is correct.

8 And of course, still up on the web today is DTX 1162,
9 their advertising. So, of course, they have used the tools
10 after May of 2016.

11 The same is true for the software. The software EXE
12 files and the upgrade scripts, they were all used, as
13 Dr. Bergeron testified in unrebutted form, in November of 2016
14 when they finished the upgrade for that particular customer.
15 And then again, up on the web today they're still advertising
16 layered upgrade framework and tools. They've clearly continued
17 to use the software trade secrets after May of 2016.

18 And guides and manuals, they used those, too. For
19 example, the forensic examiner explained that there was
20 movement of files, and Dr. Bergeron explained that the movement
21 of files in 2017, November 2016 and these other dates, show
22 clear use of the TriZetto trade secrets in the guides and
23 manuals.

24 So there are two questions on the verdict form, one is
25 for the Defend Trade Secrets Act, that's the federal claim, and

KAQTSYN6

Summation - Mr. De Vries

1 one is for the New York law claim. And it asks whether we have
2 proved that we possessed one or more trade secrets that was or
3 were misappropriated by Syntel. Again, as long as you conclude
4 that the trade secret -- sorry, that the test cases and
5 automation scripts are trade secrets, her Honor's instructions
6 means that both of these should be checked yes.

7 But this isn't a close call. The evidence we have
8 shown, ongoing sustained unexplained use of the trade secrets,
9 is extensive. And we have proven, I would respectfully the
10 suggest, that there's been misappropriation of all 104 trade
11 secrets without question.

12 For copyright infringement, that's our second claim,
13 there are two elements. The first is that TriZetto owns the
14 copyrights and the second is that Syntel copied. For copying,
15 if there's access and substantial similarity, the Court has
16 instructed you to find copying unless Syntel establishes that
17 its work was independently created.

18 There was one question, and that is: Does the Facets
19 1.0 registration cover the Data Dictionary? The evidence that
20 you heard unequivocally establishes that it does. Frankly, it
21 makes no sense to suggest that it does not. Mr. Noonan
22 testified that the Data Dictionary software is part of the
23 overall Facets software. And then Mr. Sanders: Data
24 Dictionary is part of Facets 1.0. And you will see the
25 instruction says: Was it a part, was it a subpart? This

KAQTSYN6

Summation - Mr. De Vries

1 evidence conclusively establishes that it was, so it's
2 registered.

3 So the only other question is: Did they copy it?
4 Well, you heard Dr. Bergeron say they had the source code for
5 the Data Dictionary, our Data Dictionary, in their files and
6 the source code in the middle of their D2 Data Dictionary, it's
7 precisely the same. And that is unrebutted.

8 So there is unquestionably also copyright
9 infringement, and so we respectfully suggest that the right
10 answer, when asked whether TriZetto has proved that Syntel
11 infringed one or more of TriZetto's copyrights, is yes.

12 Now I want to briefly come back to their new excuses,
13 because you will find them in the form of defenses, and I would
14 like to speak about that. So one thing that they said in
15 opening statement was that the vast majority of the information
16 was provided by TriZetto to Syntel. But you know that that
17 information was provided to use only for TriZetto. We asked
18 Mr. Reddy on the stand, and showed him his deposition
19 testimony:

20 Question: And the reason that TriZetto gave
21 confidential information to Syntel was to execute work for
22 TriZetto in the context of the MSA.

23 That's right.

24 TriZetto did not give Syntel permission to give its
25 confidential information for any other purpose?

KAQTSYN6

Summation - Mr. De Vries

1 And he said: I'm not aware of it.

2 What about the 2012 amendment? I already talked about
3 this, but I want to remind you of the evidence. Did that let
4 them use my client's trade secrets for any purpose that they
5 wanted to? Of course not. Mr. Reddy said that that was flat
6 wrong.

7 Mr. Moore, who testified, he, in PTX 44, I encourage
8 you to look at this letter, in 2014, years after the amendment,
9 he told my client: Syntel has not breached the MSA and
10 maintains confidentiality. And he refers to his
11 confidentiality obligations. It makes no sense to say that he
12 believed that the 2012 amendment somehow let them do anything
13 they wanted with the trade secrets if he wrote this letter two
14 years later. Again, this is an instance about looking at what
15 they said before the lawsuit not what they're saying at trial.

16 And when I asked Mr. Moore in his testimony, you may
17 remember I made a mistake and I didn't write the page down
18 properly during my questioning, I found it ultimately, and I
19 reminded him that in 2018 when I talked to him, he admitted
20 that at that time, years after the amendment, Syntel had not
21 discussed or taken a position that the amendment permits it to
22 use my client's confidential information to build competing
23 products or services. Whatever they're telling you at trial,
24 the evidence just doesn't support it.

25 And again, this amendment allows competition, it

KAQTSYN6

Summation - Mr. De Vries

1 didn't allow unfair competition. And when Mr. Reddy was asked
2 whether using someone else's trade secrets against them in
3 competition to compete with them without their permission,
4 that's not fair competition, he said: That's right.

5 And finally, the argument that they just got it all
6 from UnitedHealthcare, all you need to do is look at the
7 timeline. The timeline shows you that they got the trade
8 secrets and developed their own competing tools and the other
9 things they are bringing to United before they ever got to
10 United. It just doesn't add up.

11 And I think at the end of the day her Honor told you
12 that you need to bring your common sense to the table.

13 THE COURT: Five minutes.

14 MR. DE VRIES: And that the common sense questions are
15 that if Syntel thought it could use TriZetto's trade secrets,
16 why it did it lie and cover up? Why it did continue to
17 maintain its confidentiality obligations in December 2014 if it
18 thought the amendment allowed it to compete?

19 Let me address just a couple of other things. One is
20 there's some discussion with Dr. Bergeron about whether the
21 trade secrets were on the internet. And her Honor instructed
22 you that publication of a trade secret on the internet does not
23 necessarily mean that the secret has been generally known. And
24 there's no evidence in the record or elsewhere that any of the
25 trade secrets became generally known. In fact, the discussion

KAQTSYN6

Summation - Mr. De Vries

1 related to only three documents out of 104 trade secrets, and
2 if they were actually available on the internet, then why did
3 they take them from my client years earlier? The answer is
4 that they did not.

5 And then finally for transition rebates, there is
6 simply nothing that is in the record that suggests that this
7 provides an excuse either.

8 And so let me then finally take you to her Honor's
9 instructions about their defenses. Did Syntel believe TriZetto
10 would not claim that they misappropriated, or did Syntel
11 believe that my client abandoned the right to sue or delayed
12 filing the lawsuit? There's no evidence of that. This lawsuit
13 has been going on since nearly the very beginning of when we
14 started to discover the problem, and most of what we're talking
15 about here we discovered in the middle of the lawsuit.

16 So we suggest that it should be no on all of the
17 affirmative defenses. The same is true for the unclean hands
18 defense. There's nothing that my client has done that is
19 directly related to the subject matter of the trade secret or
20 copyright claims.

21 And so damages. Compensatory damages can include
22 unjust enrichment for the federal claim. And the law that
23 you've been instructed on is avoided costs may be considered.
24 Mr. Britven gave you the avoid cost number of \$284.8 million.
25 There was no alternative calculation that was given. And

KAQTSYN6

Summation - Mr. De Vries

1 Mr. Britven explained why this was a reasonable amount, this
2 \$284 million, which was much less than the overall price of the
3 development. And as you can see, if you compare it to the
4 documents that they were looking at and working on at the time
5 of the theft, like PTX 189, this avoided cost number is only a
6 tiny fraction of the overall money that they hoped to make,
7 which brings me to the amount of money that they did make.

8 As I talked with Mr. Plumpe about today, we don't have
9 any data from after mid-2018 about what money they have
10 actually made. So Mr. Plumpe admitted that there is no rule
11 that avoided costs, which are permitted under the law, somehow
12 have to be limited to the actual amount. But as you can see
13 here, we simply don't know what that amount is.

14 The reasonable royalty, that is only for the New York
15 claim, and the reason is the avoided costs are only available
16 for the federal claim. So for the New York claim, it's that
17 \$142.4 million reasonable royalty, and for the copying
18 allegation, it's \$59 million. And so I would like to say one
19 more thing about this, and that is that for the dollar amount
20 of damages, for the federal claim, which permits recovery of
21 avoided costs, as you can see on the verdict form, it's
22 284,855,192. For the New York claim, it's the reasonable
23 royalty of 142.4 million. For copyright, it's 59.1 million.
24 And it's very important, we don't want you to double count, the
25 amount of recovery that should be totaled up at the bottom here

KAQTSYN6

Summation - Mr. De Vries

1 should be no more than \$284,855,192 to ensure we're not double
2 counting.

3 So then there's punitives.

4 And your Honor, may I ask a question? I have 45
5 minutes on my timer. Am I right that I have five minutes from
6 now?

7 THE COURT: That's what Mr. Street told me. Let me
8 double-check with him.

9 You have five more minutes now.

10 MR. DE VRIES: Yes, your Honor, thank you. I wanted
11 to make sure I understood.

12 THE COURT: Yes.

13 MR. DE VRIES: Thank you.

14 So ladies and gentlemen, that brings me to punitive
15 damages. Punitive damages are to be awarded in your sole
16 discretion. We believe they're clearly warranted here. We
17 have shown deliberate intent, conscious indifference, changing
18 stories, new excuses, each of which is frankly inconsistent
19 with the other. And as her Honor just instructed you, the
20 purpose of punitive damages is to punish and deter wrongdoer
21 and others.

22 Here, if they're not punished for what they did, then
23 as I said in my opening, other companies will look at this case
24 as a playbook for taking intellectual property that's been
25 created and belongs to a company saying whatever they need to

KAQTSYN6

Summation - Mr. De Vries

1 to try to avoid taking responsibility and then move on.
2 Punitive damages are absolutely warranted here. And as her
3 Honor just instructed you, under the federal law, federal law
4 says that punitive damages can be up to two times the amount of
5 compensatory damages. And so we are asking you to award the
6 maximum possible extent under the law to punish and deter of
7 \$569,710,384, which is two times the avoided costs that are
8 permitted under the Defend Trade Secrets Act. Without that
9 award, companies like Syntel will look at this case and decide
10 that crime pays -- sorry, not crime, but trade secret
11 misappropriation pays, and that is not okay.

12 Finally, let me address their claims. Their claims
13 represent mostly a few months between 2014 and 2015; in
14 contrast to our claims, which started in 2012 and continue to
15 this day. And we believe that the evidence that's been put on,
16 we have no doubt that there is no liability whatsoever.
17 TriZetto and Cognizant did not do anything wrong. If you look
18 at the evidence I'm about to show you, you will see that.

19 Mr. Moore talked about poaching. But as her Honor
20 instructed you, the non-solicitation provision did not prohibit
21 TriZetto or Cognizant from hiring Syntel employees, and neither
22 TriZetto nor Cognizant violated this provision of the MSA or
23 the Master Services Agreement by hiring Syntel employees.
24 There was nothing wrong with hiring those employees.

25 So what did they say? Well, they said that we took

KAQTSYN6

Summation - Mr. De Vries

1 confidential information. But what was that? Well, names,
2 their work for Syntel, their experience working for Syntel and
3 their compensation. Mr. Moore testified over and over again
4 that Syntel did not instruct its employees to keep any of that
5 information confidential. And when I asked him whether he
6 could identify any Syntel policy prohibiting its employees from
7 sharing their compensation with others outside of Syntel, he
8 said: Yes, I am unaware of any such policy.

9 This is not confidential material, and they lose on
10 all of their claims unless it is. And Mr. Sanders, he was
11 here, he's the person who they accused of providing
12 information, and he said no, I didn't provide any information
13 that was Syntel confidential information. And you may recall,
14 he said they didn't even have the compensation information to
15 begin with. That was not something that Syntel shared with
16 TriZetto.

17 This, you can see, is a LinkedIn profile from one of
18 their employees showing you exactly this kind of information
19 because they were permitted to share it. As I said, this is
20 public, and where did the current pay come from? Go look at
21 DTX 1413. You will see that what Cognizant was doing was to
22 ask all external candidates to provide their pay. This is the
23 evidence that shows you where that information was coming from.

24 Finally, I will say this, what about the interference
25 with the five contracts? Her Honor instructed you that to find

KAQTSYN6

1 intentional interference there must be improper interference;
2 fraudulent, unlawful, unethical or unjustified interference
3 with a contract. But Mr. Sanders explained that Cognizant was
4 not a Syntel plan. That's something that Mr. Moore agreed with
5 when I asked him. And Mr. Moore, when he wrote a letter saying
6 don't interfere with the contracts, he said that the employees
7 were prohibited from going to work, directly or indirectly, for
8 providing services to any entity that is or was a Syntel
9 client. And there was no evidence whatsoever to suggest that
10 anyone at TriZetto or Cognizant believed that those hires
11 violated these contracts.

12 I have just a few more minutes left at the end, so
13 thank you very much for your time in listening to me.

14 THE COURT: Thank you. Ladies and gentlemen, I know
15 you have been sitting patiently. Thank you for being
16 attentive. We have one more summation to hear, then a short
17 rebuttal, but let's take a ten-minute break and then we'll come
18 back.

19
20 (Jury not present)

21 THE COURT: Let's take ten minutes.

22 (Recess taken)

23 MR. DE VRIES: Your Honor, I recognize that I went
24 over at least a minute and a half, so I know that I was into my
25 next part, so --

KAQTSYN6

1 THE COURT: I thought you only had five minutes, but
2 you ten, so that may have thrown you off.

3 MR. DE VRIES: No problem, thank you.

4 THE COURT: Also I wanted to put on the record that
5 Mr. Street has been given an external drive with all of the
6 exhibits and the exhibit list on it. If the parties could
7 confirm that you both reviewed it and agreed to the contents
8 and they include only the exhibits that have been admitted and
9 an exhibit list, I would appreciate that.

10 MS. JANGHORBANI: I can confirm for Syntel, your
11 Honor.

12 MR. DE VRIES: Confirmed for TriZetto and Cognizant.

13 THE COURT: So we will put that on our internal drive
14 so it's accessible to the jury tomorrow.

15 MR. KANE: Your Honor, Mr. Street may have mentioned
16 this to you, but there are a couple other admitted exhibits
17 here that are computer hardware. So they're here, and both
18 sides have looked at it and okayed it, it's just if we should
19 bring that back to the jury room as well.

20 THE COURT: My intention was to leave it out here, and
21 if they ask for it, to send it in. But I gather the
22 significance of it is that the computer contains source code,
23 but I doubt they will want to see the source code. And rather
24 than have computer hardware go in and out, I think we'll leave
25 that here.

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KAQTSYN6

Summation - Ms. Janghorbani

1 MR. KANE: Thank you, your Honor.

2 (Jury present)

3 THE COURT: You may proceed.

4 MS. JANGHORBANI: Thank you, your Honor.

5 I want to begin by thanking you all for your service.

6 As her Honor told you a little while ago, you alone are the
7 finder of fact, and that's a very important role in our system.
8 We trust juries to resolve factual disputes between parties.

9 It's untrusted to them by our Constitution. So we are grateful
10 to all of you for being here today to serve in that incredibly
11 critical role.

12 As the judge instructed you, you're not supposed to
13 leave your common sense outside of the courtroom. You are
14 supposed to use your common sense and apply it to the evidence
15 that you see. And I will submit that if you look closely at
16 the evidence, you look closely at the context, you will find on
17 behalf of my client.

18 These are pictures of various former and current
19 Syntel employees as well as the names of many other former and
20 current Syntel employees. Mr. De Vries asked you to find that
21 every single one of these people is a liar and a thief. And I
22 will ask you to trust your common sense. Ask yourself: Does
23 that seem right? Does that seem supported by the evidence that
24 you've seen in this case?

25 TriZetto wants you to have tunnel vision. They want

KAQTSYN6

Summation - Ms. Janghorbani

1 you to see the fact that individuals at Syntel had access to
2 the Facets software, the Facets guides, the Facets manual, the
3 Data Dictionary, that they were making use of these products
4 and service of TriZetto and in service of other clients, that
5 that in itself was wrong.

6 But that's not the whole picture, ladies and
7 gentlemen. Syntel was given those materials, had access to
8 those materials via TriZetto who provided those materials to
9 Syntel, and via UHG, CDPHP, and all of our other customers, and
10 the record on this is clear.

11 We're in an election cycle, so we've been hearing a
12 lot about fact checking lately, right? I remind you that you,
13 the jury, are the ultimate fact checkers. Don't just look at
14 the snippet, look at the entire document. You will recall,
15 when they examined Mr. Reddy, they tried to suggest that the
16 Army is ready was about us somehow unfairly competing with
17 TriZetto. And Mr. Reddy said I think your interpretation is
18 probably one I don't agree with.

19 So then we showed him the entire document, DTX 149.
20 And again, on all of these slides, I set forth the actual
21 exhibit number. And I would encourage you to look at the
22 actual exhibits. Some of the slides that you just saw in
23 opposing counsel's presentation looked like ransom notes there
24 were so many different pieces cut out of different documents
25 and stacked together. Look at the document and look at the

KAQTSYN6

Summation - Ms. Janghorbani

1 context. Look at what is actually happening. This document
2 was about poaching, poaching from Cognizant, not about any sort
3 of unfair competition by us, it was about unfair competition by
4 them. And that was what Mr. Reddy's testimony showed.

5 Mr. Britven testified about this \$950 million payment
6 or \$950 million value in the payer unit that he said is in the
7 Duff & Phelps report. Mr. Plumpe testified it's not in there.
8 Mr. Britven retook the stand. He didn't show us where in there
9 it is, and we'll submit, ladies and gentlemen, if you want to
10 look at 846, that's the Duff & Phelps report, that number is
11 nowhere to be found.

12 This is one of those slides that starts to look like
13 it's a ransom note. And this is Ankur Chadha, who they set up
14 as sort of a mysterious, shadowy, evil figure. And I submit
15 nothing could be further from the truth. Look closely at the
16 dates, look closely at who is using what for what purpose. If
17 you look at the email on the left, this is DTX 100, the
18 material that Mr. Chadha is talking about, the material that is
19 being presented that Mr. Chadha is CC'd on is from CDPHP. That
20 is the client with whom we had a TPAA. That is the client who
21 Trizetto knew we were working for. And I will submit there is
22 nothing wrong with Trizetto with -- sorry, with Syntel's
23 product consulting team having the copy of material from CDPHP
24 in order to service CDPHP.

25 On the right, this is for a different client,

KAQTSYN6

Summation - Ms. Janghorbani

1 different date, different group of people. Again, Facets Data
2 Dictionary, but it's the UHG group, and it's located -- if you
3 look in the slide, it's located in the UHG project folder. UHG
4 had the Data Dictionary. UHG could give Syntel the Data
5 Dictionary to do whatever it wanted for UHG.

6 Now TriZetto and Syntel had a seven-year relationship.
7 During that time we were servicing TriZetto, we were servicing
8 other customers, we were servicing UHG. And if you look at the
9 use as it lines up over that period of time, you will see, if
10 you look at what was being done closely, you will see that what
11 was being used was being used for an entirely proper purpose.

12 Now let's talk about TPAA. TPAA, those are these
13 agreements that give access to Syntel to a client's information
14 other than TriZetto. Not all of the customers had them, and
15 Mr. Reddy testified about this. Some of the clients never
16 required TPAAAs. So Syntel is working off of what it knows from
17 its client in terms of what is required to service that client,
18 CDPHP. We did have a TPAA, we serviced them. We didn't hear a
19 lot about CDPHP coming out of opposing counsels' mouth. What
20 is the reason? That's our largest customer, that's the bulk of
21 the profits that Syntel made, and that's clear from the record.

22 Instead, they're trying to do a gotcha on UHG. UHG
23 never required a TPAA. They claim that UHG should have. They
24 say it's in their contract with UHG. But Syntel never knew
25 what was in the contract with UHG, nor could it have. That

KAQTSYN6

Summation - Ms. Janghorbani

1 contract was confidential.

2 These two individuals, Mr. Chadha, Ms. Muthuraman,
3 they shared a series of emails about the TriZetto manuals that
4 you need. TriZetto talked about the empty chair, but they
5 never called these witnesses. They had the same ability to
6 call these witnesses that we did. We didn't call them because
7 I will submit they would have testified completely consistently
8 with the other Syntel employees that we called. They didn't
9 call them for the same reason.

10 Facets. Not a secret what this email is about, no one
11 was hiding anything.

12 We've heard a lot about this email, a lot about this
13 set of notes that were attached to an email in early 2012. Now
14 first of all, this is a period where we are competing with
15 Cognizant. That's not disputed. Cognizant had nothing to do
16 with TriZetto at that point in time, and we were completely
17 entitled to compete with Cognizant. That's what was in the
18 bull's eye of these notes.

19 Second of all, to the extent they claim it's a plan,
20 it was never implemented. These were notes from someone who
21 worked for Mr. Reddy, and the alleged plan was never
22 implemented. Again, they're asking you to believe that
23 Mr. Reddy is a liar. Look at the dates, look at the names,
24 look at what people were actually doing, and at the end of the
25 day, trust your common sense.

KAQTSYN6

Summation - Ms. Janghorbani

1 Opposing counsel put up this testimony as well. You
2 would agree with me that stealing trade secrets is not a
3 relationship gone wrong, correct? I think we would all agree
4 with that. And the question clearly to gentleman is what
5 occurred, has the relationship gone wrong or was this some
6 massive theft? I submit it's very clearly a relationship gone
7 wrong.

8 Cognizant and TriZetto were partners. Then, we
9 understand from Mr. Reddy's testimony, that relationship fell
10 apart. And so TriZetto was looking for someone to provide
11 services so that it could continue to compete with Cognizant.
12 In comes TriZetto -- sorry, in comes Syntel. Syntel and
13 TriZetto have a long and productive partnership. Then
14 Cognizant comes back, and what happens? They want Syntel to
15 pay. They want Syntel out of the picture. Why is that, ladies
16 and gentlemen? Why was TriZetto so amenable to our using,
17 having various materials, but all the sudden when Cognizant
18 shows up, it's not okay anymore. Well, I will submit it's
19 because Cognizant competes with Syntel.

20 Cognizant, there's been a lot of talk in this case
21 about keys to the kingdom. I submit that it's our position
22 that none of this is really keys to the kingdom, but it is
23 stuff that you use in order to be able to provide these
24 services. Syntel had access, Cognizant had access, clients had
25 access. TriZetto gave out a lot of keys, a lot of keys, ladies

KAQTSYN6

Summation - Ms. Janghorbani

1 and gentlemen. Now that Cognizant has TriZetto, it wants to
2 take all those keys back. Why is that?

3 Now that Cognizant and TriZetto are together, Syntel
4 could be the only alternative so that they have a choice of
5 avoiding a monopoly. This is about Cognizant making sure that
6 no one else can compete with it in this space. They're trying
7 to drive Syntel out and make an example of Syntel despite the
8 fact that Syntel never did anything wrong.

9 Syntel and TriZetto's relationship. They start a
10 partnership to compete with Cognizant, and that relationship is
11 fantastic. We heard that from everybody. They became
12 partners, and TriZetto trains up Syntel on every aspect of the
13 business, gives access to materials, they train them, they work
14 together. There's an entire list of reference manuals and
15 guides. Syntel was given access to that. They're working side
16 by side. Mr. Mehta testified that it was hard to distinguish
17 who was whom in the Denver offices where the Syntel folks and
18 TriZetto folks were working side by side.

19 And I want to point out something from her Honor's
20 instructions earlier, you are supposed to consider whether a
21 witness has an interest in the matter at hand. Mr. Mehta does
22 not even work for Syntel anymore. He appeared voluntarily. He
23 testified to you, and he has no dog in this fight.

24 What happens next? They formalize the relationship.
25 In June 2010 the Master Services Agreement was signed. Let's

KAQTSYN6

Summation - Ms. Janghorbani

1 take our time and look at this agreement, ladies and gentlemen,
2 because it controlled the relationship that we're considering
3 now. What was in the original 2010 Master Services Agreement?

4 First of all, it defined the services that Syntel was
5 going to provide. And in 2010, those services were exclusively
6 to TriZetto. Syntel was going to provide services to TriZetto.
7 But they left open the possibility that the agreement, under
8 the agreement, any new services agreed by the parties to be
9 provided by Syntel, those would also be covered by this
10 agreement.

11 Similarly, TriZetto data continues to be the property
12 of TriZetto. It cannot be used by Syntel unless it's in
13 connection with providing services as the services are defined.

14 Article 19, confidentiality. We have shown you this
15 language a bunch of time to establish there's a confidentiality
16 obligation in this document. That's true. They have not
17 pointed out the language in here that it cannot be used without
18 the disclosing party's prior consent.

19 And finally, the non-competition clause. And the
20 point of this non-competition clause, if you read it, was in
21 order to prevent the misuse or disclosure of confidential
22 information. So in order to prevent that, Syntel was not
23 allowed to compete. Why is that? It's because TriZetto
24 recognized that these materials will necessarily be used when
25 servicing a client directly. Whether they come from the client

KAQTSYN6

Summation - Ms. Janghorbani

1 or whether they come from TriZetto, those materials are
2 necessary to providing these services. If someone is going to
3 provide you services, they have to have access to those
4 materials. So now what happens when that contract is amended?

5 It was amended because TriZetto wanted to pay less
6 money. They didn't want to use as many people. So we said
7 okay, we'll amend it, but in exchange, we have all these
8 employees who need to work, need jobs, so we're going to also
9 want to compete directly. And they said okay. And so an
10 agreement was reached between Mr. Reddy and Jay Cook, who was
11 the head of that division at the time. That's who was actually
12 negotiating the agreement, and they reached a deal. We would
13 get paid less, but we could compete. That was then reduced to
14 a document by the lawyers. So the agreement was amended to
15 state that any provision related to service provider being
16 restricted from competing with TriZetto are deleted in their
17 entirety.

18 This is the contract that governs the parties'
19 relationship today. And I the note you have not heard any
20 emphasis on it by TriZetto, and that is because continue Syntel
21 was the party that has consistently followed this contract.

22 Non-competition was removed. We were now allowed to
23 provide services directly to customers. What did that mean?
24 That means that the parties have now agreed that the services
25 that Syntel is allowed to provide are not just limited to the

KAQTSYN6

Summation - Ms. Janghorbani

1 services to TriZetto, they now include the services that Syntel
2 wants to provide to the customers.

3 What does that mean about confidential information?
4 It's still confidential. It still remains confidential. No
5 one is telling you that is not. But what this means is
6 TriZetto acknowledged that we would have to be using the very
7 things that they're complaining about today, the Data
8 Dictionary, certain of the tools, that we have to use those to
9 service these clients. And that service, services, is now
10 captured, because we negotiated for the right to do that.

11 Now again, confidentiality, parties' prior consent.
12 What do they consent to us doing? They consented to us
13 competing and using these materials to compete.

14 So how did this go, this new world? It was great.
15 Everybody got along. They pitched together with TriZetto on
16 various accounts, Cambia, ICB-10, others. Then CDPHP requested
17 an RFP. TriZetto -- not Syntel, TriZetto decided it wanted to
18 pitch on its own for that one. So we pitched on our own for
19 that one, and after that happened, Mr. Reddy told you they
20 congratulated us and said good job.

21 We also started working for UHG. That happened over
22 the summer of 2014. We entered into an agreement with them.
23 And again, they had to provide us with their materials so that
24 we could service them. Was that wrong? No. It was consistent
25 with the contract. And how do you know this, ladies and

KAQTSYN6

Summation - Ms. Janghorbani

gentlemen? Because the folks at TriZetto were aware that we had all of these engagements. And they never complained about it, never complained about it until Cognizant came on the scene.

And did we engage in of fair competition with TriZetto? Absolutely. We won the right to compete with TriZetto. That's something -- they're showing you a quote from Mr. Reddy that would suggest that somehow he thought that we weren't allowed to use these materials in competition. He knows we used these materials in competition. Look at the context, look at what was actually said, look at what was actually talking about.

Now let's talk about the PCT. The PCT, that's the team run by Mr. Chadha that's become their evil plot happening over at TriZetto -- I mean happening over at Syntel. But TriZetto was aware of it at the time. This was a team that was created to provide specialized services to clients, including TriZetto.

Did the PCT ever do work with or for TriZetto? Yes.

Did anyone at TriZetto ever voice the opinion that the PCT was doing anything improper? No. They liked these additional services. And PCT worked for other clients as well.

And in connection with that work, did TriZetto allow Syntel and individuals at PCT to have various materials? Yes, they did.

KAQTSYN6

Summation - Ms. Janghorbani

1 And then Mr. Reddy gave you a long answer. I won't
2 make you read the whole thing with me now, but he gave you a
3 long answer about the various projects that the PCT did with
4 TriZetto. And again, they make a big deal of Mr. Chadha saying
5 he didn't have TriZetto materials that he was aware of. We'll
6 talk about that a couple of times, but certainly his team did.
7 He was a manager. He wasn't down in the weeds, just like
8 Mr. Reddy isn't actually the one working with these tools.

9 (Continued on next page)

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KaQ3syn7

Summation - Ms. Janghorbani

1 MS. JANGHORBANI: (Continuing) But he was the manager
2 of this team, and everybody knew, we knew, they knew, that
3 these individuals were providing services for and with
4 TriZetto.

5 Then what happens? We have a conference. Again, if
6 they really thought any of this we were doing in 2014 was
7 wrong, here is a conference where we're invited. And there is
8 200-plus customers, they're introducing us to their customers,
9 even though they know at this point we're competing with them.
10 They introduce us to the customers and we are official
11 partners. We are up on stage we're participating in the
12 keynote.

13 And who else was there? The PCT team. They were
14 there. And TriZetto didn't say, oh my goodness, these guys are
15 so bad, they're taking our stuff. They are saying this a great
16 service for us, and we can sell it to our clients coming to
17 this conference.

18 They talked about the fact that they paid us tens of
19 millions of dollars. They did. Because of all of the work
20 that we did for and with them. And it's not disputed, ladies
21 and gentlemen, that we did that.

22 Then what starts to happen. There are rumors of
23 Cognizant acquiring TriZetto, and things go off the rails.
24 Cognizant is going to acquire TriZetto for about 2.7 billion.
25 And now, all of a sudden, TriZetto decides it wants out of the

Kaq3syn7

Summation - Ms. Janghorbani

1 deal that lets us compete. We saw this e-mail from Chuck
2 Sanders, stating unfortunately, Jake Sorg eliminated the
3 non-compete language. I can't explain the rationale for this
4 change.

5 They're realizing, uh-oh, Cognizant is not going to
6 like the fact that we've let one of its biggest competitors
7 have the right to compete in this space.

8 And here we have Mr. Sanders saying, Tom, Jude has
9 asked me to step in and help with -- and that's the CEO -- has
10 asked me to help EPAM, Syntel, Infosys. Who are those? Those
11 are the other companies that also compete with Cognizant. So
12 they need to come up with a plan as to these other service
13 providers and what they're going to do about them because
14 Cognizant wants them gone.

15 And so what is the plan? If we need to play hardball
16 with them, it is a little bit of a stretch, a little bit of a
17 stretch because we have a contract that sets forth that they
18 are allowed to do this. But it is a little bit of a stretch,
19 but we can tie them up in a dispute if necessary.

20 Ladies and gentlemen, I will submit that's exactly
21 what they've done. Why are they doing this? Again, discourage
22 competition in this space.

23 So after the merger occurs, we terminate the contract.
24 This is where the contract gets terminated, and what do we do.
25 We say we want payment of the rebates. And now, this

Kaq3syn7

Summation - Ms. Janghorbani

1 stipulation, ladies and gentlemen, these are uncontested facts
2 as her Honor instructed you. We requested payment of the
3 rebate. Those are basically like severance payment, several
4 million dollars. They didn't contest to the penny what they
5 owed. You can take a look at all of the stipulation. Instead
6 what did they do. They sent back a letter the next day saying
7 we're starting to think maybe you're misappropriating
8 something. That you're violating your obligations under the
9 MSA. If true, if true, we have a dispute.

10 So that's the first time that TriZetto ever complains
11 about our behavior under the MSA. First time they ever
12 complained about our use of the confidential information.

13 But TriZetto agreed, finally, right before this trial,
14 to pay us \$5.183 million. That's what they owed us. We went
15 to them when this relationship ended, and said basically this
16 has been great, it's over now, we are entitled to this money.
17 And instead of saying, here's your money, walk away. What did
18 they do? They came after us and they came after us hard. Tie
19 us up in a dispute. They knew they owed us all along, that's
20 why they paid it the Friday before this trial started.

21 Let's talk about this misappropriation that they
22 thought they were seeing. This various suspicious downloads
23 that they saw. We've picked through a couple of these, ladies
24 and gentlemen, and I will submit you can take a look at the
25 records in evidence, and I will point some of them out to you

KaQ3syn7

Summation - Ms. Janghorbani

1 and you will be able to see that this not a nefarious plot.

2 This is just a record of what's on various people's computers
3 in a time when they were entitled to be working on these
4 things.

5 So Viral Dave. You'll remember Mr. Dave. They say
6 that he stole documents on Thursday, November 6. His last day
7 was the next day. He started working at Cognizant on Monday.
8 Do we really think that Mr. Dave was stealing those materials
9 to somehow benefit a plot by Syntel?

10 You can do this yourself, ladies and gentlemen, if you
11 look at DTX 245. That's the forensic examiner's report. There
12 is a lot of charts, but I'll submit you can go to page 866 --
13 it is a big document -- and there is a column, last written
14 time or date opened. You can look at that. I'll submit that
15 that's the most useful column. You can look at the other
16 columns, some of which Mr. De Vries pointed out in his
17 presentation. Those only show that essentially there is a
18 document on someone's computer or that the document moved
19 around. This is when someone actually used them. You can go
20 through it yourself. Go all way through it. It also shows
21 dozens of documents that were in employees' recycle bins.
22 Again, you can see that for yourself. Anjulika Srivastava, one
23 of their liars, one of their thieves, you look in the report
24 245, and you look at pages 913 to 917, you'll find a giant
25 block of documents that based on their file path says recycle

KaQ3syn7

Summation - Ms. Janghorbani

1 bin. They are all just sitting in a recycle bin somewhere.

2 Mr. Chadha at some point realized that in fact he did
3 have TriZetto documents on his computer, on his system. And
4 what did he do? He raised his hand and he reported it. Now,
5 ladies and gentlemen, this is like if you were shopping, put
6 some gum in your purse, walk out, forget to pay, realize you
7 forgot to pay, go back inside, and pay. Is that a sign that
8 you were trying to steal the gum? I'll submit it is exactly
9 the opposite. It is exactly the opposite.

10 What is the more natural inference here? Is that he
11 was lying and then for some reason all of a sudden decided to
12 confess? Or is it that he didn't know this stuff was on his
13 computer. We all have stuff on our computers and our phones
14 that we're sure we don't know is there. Their technical expert
15 testified to that. That while he, Dr. Bergeron, probably knows
16 everything on his computer, the rest of us probably don't.

17 There are other examples. I would point out just a
18 couple. Ramu Baru, Chetan Chaudhary, these are other
19 individuals, if you look, they are listed at DTX 87. Those are
20 individuals that have downloads. They're hired, PTX 851,
21 they're hired by TriZetto Cognizant.

22 And what's more interesting here. They complain in
23 November about the fact that there were these suspicious
24 looking downloads. These suspicious looking downloads in
25 November, they knew about them then. They hired these folks in

KaQ3syn7

Summation - Ms. Janghorbani

1 March. Clearly they didn't think that these folks had done
2 anything wrong, because they're hiring them after they knew
3 about this supposedly inappropriate behavior.

4 Let's walk through the claims briefly. First I want
5 to point out that despite that letter that TriZetto sent saying
6 you may be in breach of the MSA, TriZetto hasn't sued us for
7 violating the contract. Why is that important? I will submit,
8 ladies and gentlemen, because it shows that we were a good
9 faith partner in all of this. If anyone has behaved in bad
10 faith, it is Cognizant and TriZetto. Again, let's get rid of
11 the competition.

12 What does the contract mean in terms of your
13 deliberations? Two things. One, it means there is no
14 misappropriation where that is a question for you. And of
15 course her Honor has already instructed you as to two alleged
16 trade secrets, and we'll talk about those in a moment, where
17 you don't have to determine whether or not there is
18 misappropriation. But as to the rest of it, you can ask
19 yourself, did they have a right under the contract to access
20 this material, to have this material, to use this material.
21 And I will submit that they did, and you should find for my
22 client as to all of the remaining of those claims.

23 As to Syntel's defenses -- and this goes for all of
24 their claims -- this goes for misappropriation, this goes for
25 copyright, this goes for everything. If they knowingly and

KaQ3syn7

Summation - Ms. Janghorbani

1 intentionally abandoned their right to sue us for using this
2 stuff, and that's what happened here. They entered into a
3 contract that said here are the things you can use our
4 intellectual property for, and that's then what we used their
5 intellectual property for. That's exactly what happened. They
6 waived it by intentionally entering into that contract.

7 On estoppel, did they mislead us into believing that
8 we had the right to do this. Okay. Say they disagree with us
9 on what the contract said -- I don't think they do -- but say
10 they do. For two years, for two years, we operated under that
11 contract. We competed with them, they knew about it, and they
12 didn't say boo. We relied on that. We had no reason to think
13 what we were doing was wrong. They cannot now turn around and
14 smack us for it.

15 Let's talk about the claims under New York law and
16 DTSA for trade secrets. Her Honor instructed you there is
17 basically two pieces you have to find. One is are these trade
18 secrets, and that's as to all 104 of the alleged trade secrets.
19 And then is there misappropriation. That's as to 102 of them.

20 Trade secrets can't be publicly available or generally
21 known. Now, we heard detailed testimony from Mr. Noonan about
22 the Facets manuals and guides. We heard that DTX 893.55, the
23 claim data model, that was the heart of Facets. And we all saw
24 that this showed the important architecture, lots of
25 information about Facets, and you'll recall it was that little

KaQ3syn7

Summation - Ms. Janghorbani

1 series of bubbles with the writing. You can look at it in that
2 document if you want to refresh your recollection.

3 Dr. Bergeron testified that he didn't find these
4 documents on the internet when he looked. Now why did he look?
5 Why did he Google them? Because he knew that would interfere
6 with their ability to be trade secrets. And her Honor's
7 instructed you that just the fact that something's on the
8 internet isn't enough. It has to be generally known. But what
9 does generally known mean. I submit to you that it means if a
10 competitor wanted to find this easily, they could.

11 There is the document from 893. As best as you can
12 tell, Dr. Bergeron, it appears to be the data guide that he
13 testified about. It appears to be, he testified. And then I
14 said, Would you agree with me that at least some subset of the
15 trade secrets are publicly available on the internet? He said
16 That's correct, yes, based on these documents you just showed
17 me. And then he said, I asked him if he could dispute it, and
18 he said there are at least three documents that some version is
19 available to download by anyone from Google.

20 What else was important from Dr. Bergeron's testimony
21 about whether these are trade secrets? Patents. This is how
22 you know that this claim is not as baked as they'd like you to
23 believe. Patents cannot be trade secrets. Their expert
24 readily admitted that.

25 But we heard from Mr. Sanders that there are patents

Kaq3syn7

Summation - Ms. Janghorbani

1 on this material. TriZetto has patents on the material. But
2 did they ask Dr. Bergeron to look at those patents and see what
3 overlapped and what didn't in terms of his alleged trade
4 secrets? No. They never asked him to look at that. I would
5 submit they didn't ask him to look at that because there would
6 be overlap, ladies and gentlemen.

7 Here is another factor in terms of whether or not
8 something is a trade secret. In order to be a trade secret,
9 under both the DTSA and New York law, the item at issue has to
10 have value. Now, I will submit they can't satisfy this, ladies
11 and gentlemen.

12 I want to start first with the two of the 104 trade
13 secrets. That's where the only question you're being asked is
14 are they a trade secret. Those are the -- the words are
15 escaping me. Those are the test cases and the automation
16 scripts. The test cases and the automation scripts, I will
17 submit, they showed you this fun graphic of this guy with the
18 super squeegee. The test cases and the automation scripts are
19 these rags. They are used to do a job, but then once they are
20 used, they're done. Okay. Now several of the other pieces in
21 this case are also rags. For various reasons, either because
22 they've gotten to be so old, or because otherwise they cannot
23 be used again.

24 So let's look at the test cases and automation
25 scripts. Mr. Mehta, do they have value for customers other

Kaq3syn7

Summation - Ms. Janghorbani

than the one for which they were created? He said no. They're very involved, they're very customer specific. So they're used for that one customer. So to the extent that they're talking about this repository of these specific test cases, they don't have a value going forward, except to the client who actually has that test case itself.

Mr. Chadha, same thing. Do they have a high degree of reusability? No. They don't.

Now, Mr. Noonan said that there have been many, many dozens of different versions of Facets over the years. I will submit, ladies and gentlemen, you can think about this in the context of Mr. Plumpe's testimony about obsolescence. Some of the trade secrets that are being referred to in this case, if you take a look at them, are quite old. Think about what phone you had many, many years ago. Think about what car you had many, many years ago. Is it as valuable as the brand new model? No.

Misappropriation. Now again, you are going to be asked only as to 102 of the trade secrets, so I'm not talking about these right now. Anything related to the test cases and automation scripts, that's not what I'm talking about right now. But what they're telling you is we copied and stole their tool. But that's just not right, ladies and gentlemen.

What actually happened? They gave us the tool to use. That was part of the contract. That was part of our

Kaq3syn7

Summation - Ms. Janghorbani

1 relationship. The customer also gave us the tool to use.

2 So if we look at their original premise, the idea that
3 they have this super squeegee, and only by stealing it can we
4 service these customers, that's just not right. They gave it
5 to us, the customers gave it to us.

6 So, they say, ladies and gentlemen, that we copied it
7 and we copied it and used it improperly. I will submit that if
8 you look at the record, when we were copying it, we were
9 copying it to use it with a customer who had access to it. So
10 that is essentially a red herring.

11 But even so, even so, you haven't heard any testimony
12 that the tools that we copied were any different than the
13 standard TriZetto tools. They've made a big point of that. So
14 we could have always used the customer version. What have they
15 pointed to? They've pointed to ads where we say we can use
16 these tools, we have these tools.

17 Now, these customers are savvy. They know what the
18 tools are. What we're advertising is our ability, our
19 knowledge, what we've gained throughout this relationship.

20 And why do they not want us doing that? Because
21 Cognizant doesn't want it to be the case that TriZetto gave
22 away the keys to the kingdom, taught, taught Syntel how to do
23 all of this stuff over the period of their long relationship.

24 Now, adequate specificity. This is for the New York
25 claim only. This instruction is not in the DTSA. They have to

KaQ3syn7

Summation - Ms. Janghorbani

1 allege the trade secrets at issue with adequate specificity.

2 Now, let's think about what that means. It means you have to
3 know what is the trade secret. Dr. Bergeron did not specify
4 what the trade secrets were. How much of the document has to
5 be a trade secret in order to make the document trade secret?
6 He said if there is a trade secret in the document, the
7 document is a trade secret. So if there is anything secret in
8 the document, then the whole document becomes a trade secret?
9 Well, in general, yes, I mean, not to be absurd about it. But
10 yes. In general. That's your opinion. That's how you
11 proceeded in your analysis of this case, right? Answer yes.

12 He testified then on redirect with opposing counsel
13 that if you were going to print all of the trade secrets how
14 tall would it be. Many, many stories.

15 Ladies and gentlemen, all he's told you is there is a
16 many stories high pile of documents that somewhere within them
17 lies some trade secrets. If you have to be guessing what is
18 and isn't a trade secret or what is and isn't alleged to be a
19 trade secret, then I will submit there has not been adequate
20 specificity under New York law.

21 Now, the DTSA only, DTSA only covers acts of
22 misappropriation that occurred or continued to occur on or
23 after May 11, 2016. I want you to think very carefully, ladies
24 and gentlemen, about what evidence there has been that anything
25 occurred after 2016. Certainly nothing from any of the fact

KaQ3syn7

Summation - Ms. Janghorbani

1 witnesses in this case. And I will submit, nothing in the
2 record evidence as well. He showed you testimony from one of
3 his experts that there was something that was occurring in
4 2016, after May in 2016. But his other expert testified that
5 the alleged misappropriation stopped in 2014.

6 Which of his experts is to be believed? I will submit
7 you're to believe the evidence in this case.

8 Copyright. Let me go through this quickly. We've
9 seen that there are these registrations, and as you know from
10 her Honor's instruction, as to two of them, the Facets Roadmap
11 Review and the Best Practices and ICD-10 Configuration, those
12 are registered. The other is this Facets Data Dictionary they
13 are arguing is copyrighted, but the registration that they have
14 is for Facets 5.1.

15 Now, first, ladies and gentlemen, I'll submit that you
16 have not heard much, if at all, about the Facets Roadmap Review
17 or the Best Practices and ICD-10 Configuration. Again, these
18 are documents that you haven't heard what the value was, why
19 are these two pieces of paper worth as much as Mr. Britven has
20 told you that they're worth.

21 But let's talk for a minute just about the Data
22 Dictionary. You have to establish that the Data Dictionary was
23 a part or subpart of Facets 5.1. Well, is it a part or is it
24 not a part? I will submit that their witnesses testified
25 inconsistently.

KaQ3syn7

Summation - Ms. Janghorbani

1 So, Data Dictionary. You said it comes with Facets.
2 Is that right? Yes. And then if it comes with something else
3 is not a part. Is it ever possible to get Facets and not have
4 the Data Dictionary? Yes, yes, you can break those things up.
5 They are separate things.

6 Then Mr. Sanders came and he sat here during the
7 testimony of Mr. Noonan. Then he got up and he said is it
8 part? And he said yes.

9 That's what they're trying to prove, ladies and
10 gentlemen. And I will submit there is an alternative way that
11 you can be a derivative work, but Mr. De Vries didn't argue
12 that to you just now, and I'll submit there is no evidence of
13 that either. All of these, again, it fits with a piece. All
14 of these were registered in connection with this lawsuit. None
15 of these registrations existed prior to the lawsuit.

16 Let's talk about damages. Why am I talking about
17 damages when I think I've made my position pretty clear that
18 there's no -- we do not believe that there is any liability
19 that should lie in this case? But I think that damages fit
20 with what we've been talking about in terms of their liability
21 claim as well. This is about crushing a potential competitor.
22 This is not about compensation for a specific harm. Britven
23 has a range of damages. Avoided costs, reasonable royalty,
24 lost profits. \$284.9 million. That is a huge number, ladies
25 and gentlemen. And his reasonable royalty is half of that.

Kaq3syn7

Summation - Ms. Janghorbani

1 Lost profits 8.5 million. Now, that one is not as crazy. But
2 the fact that they're here arguing for a nearly \$300 million
3 award of damages from you, and I just heard Mr. De Vries say
4 he'd actually like you to double it so it's punitive so they
5 can discourage other companies from doing this.

6 That's exactly what they want to do. They want to
7 discourage other companies from competing with them. It's not
8 about an IP violation. An IP violation, a violation as to
9 their trade secrets, her Honor has instructed you that has to
10 be caused. The damages have to be caused by the actual
11 infringing conduct. There has to be a tie. And they've
12 provided no such tie.

13 Okay. Let's start with unjust enrichment. Unjust
14 enrichment, unjust enrichment you were just instructed by her
15 Honor is often the infringer's profits. Unjust enrichment is
16 often the infringer's profits. Now, what were the profits
17 here? The entire profits made by Syntel in connection with the
18 services that they're complaining about, \$10.2 million. The
19 vast majority of that, nearly 7 million of that, was CDPHP the
20 client that we had a TPAA to service. What's left? 3 million.
21 Of that, UHG only, the profits are \$823,000. That's the only
22 competition that you actually heard about in this case that
23 they complained about, right. They said that we were doing
24 this UHG work and we shouldn't be. But they haven't shown you
25 any evidence that they would have otherwise gotten that UHG

Kaq3syn7

Summation - Ms. Janghorbani

1 work if we hadn't gotten it. In fact, the evidence is to the
2 contrary. The evidence is very clear that United Health Group
3 did not want to work with a monopolist. So once Cognizant
4 shows up, they're coming to us.

5 Avoided costs make no sense here, and I wrote
6 something down on this post-it I brought up with me to do this.
7 The avoided costs, Mr. Britven testified those are costs saved.
8 What costs were actually saved by Syntel here? Zero. Zilch.
9 Why is that? Because as to any of these materials we were
10 using with these clients, they could have given us a TPAA for
11 free. The record is that a TPAA costs nothing. So, when you
12 heard Mr. Britven say that avoided costs equals costs saved,
13 that to me is the death knell of avoided costs.

14 We've heard a lot of other reasons why avoided costs
15 make no sense. It is the cost of development of the entire
16 product. The 10 years of development of the product. But
17 TriZetto still has the product. And unlike the money that
18 Syntel was making off of the services, TriZetto makes hundreds
19 of millions of dollars a year licensing out this product.
20 There is no evidence that Syntel took or in any way destroyed
21 the value of Facets. All there is evidence of is Syntel is
22 competing with Cognizant for the services.

23 It is highly disproportionate to the profits, it is
24 absolutely economically unreasonable, and when you think of
25 avoids costs as costs saved, I want you to think about the fact

Kaq3syn7

Summation - Ms. Janghorbani

Syntel could get these from the clients for free. And this is just testimony, never disputed, that the software is very valuable. Multiple witnesses testified to that. Hundreds of millions. Mr. Britven, Syntel doesn't sell software that competes with Facets. Syntel doesn't sell Facets software. Syntel is a services company.

So what does this mean? We are a services company. We use these tools to service this product. Right. That is not commensurate with the entire cost of developing the product. And I think that's something that fits in the theme from earlier of use your common sense, ladies and gentlemen. You rent a car for a week. You go on vacation. You don't pay for the cost of building the car. There is no tie, no link between the alleged wrongdoing and the cost to develop assets.

And I want to remind you something else about these avoided costs damages that are so massive. They only apply to the DTSA claims, and again, we're going to go back to that idea that whatever damages they get has to be caused, caused by whatever conduct was the wrongdoing. I want you to ask yourself, even if you can find something in the evidence that was done after 2016, what harm did that actually cause? Did it harm TriZetto to the tune of \$300 million?

Now, let's move to reasonable royalty. Reasonable royalty is supposed to be what Syntel would have agreed to pay for use based on full knowledge of actual benefit and actual

Kaq3syn7

Summation - Ms. Janghorbani

use. i.e. what would I pay to rent this. What would I pay to rent this thing, to use it for my purposes. And again, Syntel used it to make about \$10 million. What would they have paid to do that?

Under Britven's avoided cost calculation, renting apartment 6D is the cost to buy the entire building. The reasonable royalty is only a little bit better. It's half the cost to buy the entire building. We've all rented apartments, I assume. And when you go to rent the apartment, you know it costs a lot less to rent it than to buy it. It also costs a lot less to rent the piece of the building that you are going to be using than it would cost to buy the entire building.

And Mr. Britven claims he did some sort of reasonable royalty, but he didn't. He just took half, half of his avoided costs number. Just divided it in two.

What would a reasonable royalty look like in this case? We submit you can look at the Duff & Phelps report. This is a document it's in evidence, 846. It was prepared to value the very assets that Cognizant acquired when it acquired TriZetto. It was for public reporting, it was done in accordance with accounting principles. This is a document that has nothing to do with this litigation and it's reliable.

And what do they say. They said the royalty rate of the technology that Cognizant was acquiring from TriZetto was 10 percent. That's a reasonable royalty rate. And so,

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Summation - Ms. Janghorbani

1 Mr. Britven's numbers for revenue are 26 million that Syntel
2 made and that's revenue, not profits, right, so that's before
3 we take out the costs. Revenue on the UHG project. 10 percent
4 of that would be 2.7 million. Mr. Britven said yes. So, a
5 reasonable royalty based on his numbers would be 2.7 million.
6 A reasonable royalty based on Mr. Britven's numbers,
7 Mr. Britven's revenue numbers, which come from the actual
8 financial data of the company, that's \$1.7 million.

9 That's what rent looks like. That's what rent looks
10 like compared to the cost of the actual thing.

11 And lost profits, lost profits are of course over
12 inclusive, right. Mr. Plumpe calculated them to be \$4.6
13 million. Britven, \$8.5 million.

14 Now these are the profits that each of the parties
15 think that if this were wrong, if liability were appropriate,
16 what TriZetto could have earned on UHG that it did not. This
17 is over inclusive, right, because there are other aspects to
18 these lost profits. The work that's done isn't just these
19 trade secrets. It isn't just the manuals and the tools. And
20 there's been no testimony, nothing at all, that shows that UHG
21 somehow would have given this work to TriZetto if it hadn't
22 given it to Syntel, or it wouldn't have given it to Syntel but
23 for the fact that Syntel did what it is that TriZetto alleges
24 it did wrong.

25 Copyright damages. Let's remember it is those three

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Summation - Ms. Janghorbani

1 things, two documents that you've heard almost nothing about,
2 and the Data Dictionary which may or may not be covered by the
3 copyright. And yet what he's coming after is not specific to
4 those documents or how they were used. It is not a rent for
5 using them the way that we did. It is one-half of the entire
6 cost to develop the Data Dictionary. Even if you think that
7 that's somehow appropriate, it is over inclusive because it
8 includes the costs of the trade secrets. Not just the
9 copyright. And you'll see in her Honor's instructions that you
10 can also award lost profits, you don't need to do a reasonable
11 royalty as a proxy for lost profits. We know what the lost
12 profits were, that 8.5 million. Again, over inclusive, because
13 that includes all of the work, not just whatever part of the
14 work was tied to these three materials.

15 What's Mr. Plumpe's damages calculation. \$823,899.
16 I'll submit that if you find that there was copyright
17 infringement here, that's a much more appropriate number. And
18 even that overstates because it's based on the entirety of the
19 profits from the UHG work.

20 Let's go through Syntel's claims. I have about 12
21 minutes remaining by my math. Okay. They're broken into two
22 categories. First it is the breach of the MSA. This is the
23 contract, ladies and gentlemen. It all comes back to the same
24 contract. It is that they took our confidential information in
25 violation of the MSA, and used it to hire our people, that's as

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Summation - Ms. Janghorbani

1 against TriZetto. Misappropriation. Misappropriation is that
2 they took our confidential information and used it improperly
3 separate and apart from the MSA. And intentional interference
4 with the MSA, that's as against Cognizant. That Cognizant
5 worked with TriZetto, so that TriZetto -- because we didn't
6 have an MSA with Cognizant. We had an MSA with TriZetto. It
7 was that Cognizant tried to interfere with our contract with
8 TriZetto.

9 We saw people getting poached. And who was getting
10 poached? There were two sets of employees that were being
11 targeted: Senior people, knowledgeable people. The folks that
12 were looked at as role models, the folks that other people
13 followed, the people who could take the business and grow it
14 and develop it. People who were leaders. That's who they
15 wanted to take from us.

16 And so we reported it. We reported it to Mr. Kearns
17 and Mr. Ray. What did they do? They denied it. They said
18 we're not Cognizant. We don't think Cognizant's doing anything
19 either, but we're not working with Cognizant. That wasn't
20 true. They were working with Cognizant, they were secretly
21 sending information to Cognizant. They admitted to providing
22 Cognizant with Syntel employee information. They were
23 providing confidential information.

24 Now they said that job descriptions, that's what you
25 can find on LinkedIn. It says I was an assistant manager of

Kaq3syn7

Summation - Ms. Janghorbani

whatever. That's the description, that's not the role. This information, ladies and gentlemen, and please, look at it, far more detailed. That's what projects they were working, specifically their roles on different teams. Very detailed. Names, locations, current role, and current pay. We need names, locations, current role, and current pay. They also needed cell phone numbers. I've already given the heads up to the recruitment team that we'll share names. They got that information. They got that information.

And this goes back to my fact check theme from the beginning. Now, I don't have a copy of Mr. De Vries' slides but he showed you at the very end of his presentation -- I mean, I do have a copy, I have one in my hand. I don't have a copy I can put up electronically. He shows you an e-mail saying that Cognizant had interviewed the following candidates and asked external candidates to confirm their current and expected salary. He showed you that e-mail.

We haven't seen that e-mail before during the trial. Nobody testified about it. Why is that? These aren't Syntel employees, ladies and gentlemen. They're asking for salary information from folks that they're hiring from other places. They didn't need to ask for it in terms of our people. They already had it from our people because they took it. They took it from TriZetto inappropriately. TriZetto and Cognizant took it from Syntel inappropriately. And that's DTX 1413, if you

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Summation - Ms. Janghorbani

1 want to check what I'm saying for yourself.

2 TriZetto admitted it was providing lots of
3 information. But they kept denying that they were poaching.
4 They kept denying it. And in fact they kept saying we know we
5 can't hire your employees. Now, the judge has already
6 instructed you that it turns out under the MSA, they could
7 hire, they could hire the employees. They didn't know that.
8 So what did they do. Instead they came up with this very
9 elaborate process of funneling secret information from TriZetto
10 to Cognizant so Cognizant could make these hires. And then
11 you've seen e-mails about how they were going to pay back,
12 Cognizant and TriZetto then had a cost sharing arrangement
13 because these were really, these are really going to be
14 TriZetto employees. Again, they thought that they couldn't do
15 it one way, so they tried to find another way. And they kept
16 it secret from us. They didn't tell us.

17 Now, were they relying on LinkedIn? No. Use your
18 common sense, ladies and gentlemen. If you have a LinkedIn
19 profile, if you've ever looked at a LinkedIn profile, nobody
20 puts their salary on their LinkedIn profile. The vast majority
21 of people don't put their cell phone number on a LinkedIn
22 profile. Use your common sense. They also knew very business
23 specific information about who these folks were and what they
24 were doing.

25 They hired 84 of our people. 84 direct hires.

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Summation - Ms. Janghorbani

1 Employees are our greatest asset. What we have are people with
2 knowledge who have been trained, who can lead, who can serve a
3 client. These are our folks that we want to keep employed with
4 us. So it was a huge loss to lose these people. They're
5 losing the leaders, they're losing the force multipliers.
6 Obviously, it was a very big impact for us, said Mr. Reddy.

7 Now, I know that opposing counsel sort of shrugged his
8 shoulders at the idea that we've identified the value of their
9 various IP claims, the use of some paper, some paper that
10 clients had that TriZetto was giving out to lots of different
11 people, the use of that paper, the use of those bits of
12 software, they've said that we are undervaluing that. Well,
13 I'll submit they're undervaluing people. "Resources" as we've
14 heard them referred to throughout this trial. It caused great
15 alarm. It was a knowledge loss. When you take a group of
16 people, the entire project is gone. So, we were working on
17 projects, we had entire groups of people who weren't just
18 individuals, they were also working as a team and they stole
19 those teams.

20 And you heard Mr. Sheets this morning testify to the
21 lost profits of 14,793,042 and then the unjust enrichment to
22 defendants to TriZetto of stealing these folks. And this is
23 straightforward, ladies and gentlemen there is no magic in this
24 math. He walked you through it. It is literally just the
25 billable hours basically, reduced by some factors of which

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Summation - Ms. Janghorbani

1 folks we might have lost from our teams anyway even if they
2 hadn't done the poaching.

3 Now, our last claim, intentional interference with
4 employee contracts. These are five contracts,
5 non-solicitation, non-compete. Five individuals we have
6 contracts with them. And what did they do? They hired them
7 away from us. Now, they can't claim that they didn't know that
8 they weren't supposed to hire these people away from us. We
9 put them on notice. We put them on notice on December 31,
10 2014. And what did they do after that? They hired four of
11 these five people.

12 I want to talk about Swapnil Adhav. He was one of the
13 ones that was hired before that date. But what do we know
14 about him? We heard a lot of testimony from Mr. Mehta about
15 the fact that Swapnil Adhav, this was one of his key folks
16 where they were trying to negotiate the end date with TriZetto.
17 They knew specifically this was someone that we were trying to
18 keep. We told them. And what did they do? They sat on their
19 hands, they didn't implement a plan. So they didn't give us
20 the chance to keep our people. Instead they interfered and
21 they took him too. That's \$1.2 million, ladies and gentlemen,
22 for those individuals.

23 Now I am going to go back to where I started. Their
24 case asks you to believe that all of these employees, former
25 and current Syntel employees, they're liars and they're

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Summation - Ms. Janghorbani

1 thieves. Does that sound right to you, ladies and gentlemen?
2 Check the evidence and I submit it will not support that
3 conclusion. Now, the names that are now in red, those are the
4 liars and thieves, those are the people who they've accused of
5 somehow wrongfully having or using information. Those people
6 were all hired by Trizetto and Cognizant. Swapnil Adhav, who
7 we were talking about. Ramu Baru, we talked about Viral Dave.
8 All of these people, they were hired by Trizetto and Cognizant.

9 We've also heard a lot today about these computers.
10 They're theoretically hidden somewhere in a closet in India.
11 You look and you can again, you can look at the report from the
12 forensic examiner, it will walk through the computers that were
13 missing. Which computers are missing? These folks. These are
14 all folks who now work for Trizetto and Cognizant whose
15 computer was never found.

16 What's more likely, they're hidden somewhere or these
17 folks took them with them maybe? It wouldn't be that strange,
18 right? We heard from Mr. Mehta, they were working in Denver.
19 They went home over the weekend. They came back. They were
20 working in the same office in Denver. All that changed was
21 their business card. No longer said Syntel. Now it said
22 Trizetto Cognizant.

23 So I ask you, are these liars and thieves that they
24 hired? I think you know the answer. We asked Mr. Sanders, And
25 you certainly wouldn't have hired him if you thought he was a

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Rebuttal - Mr. De Vries

1 thief, right? If we thought he was a thief? Chances are we
2 would not hire someone who we thought was a thief.

3 Ladies and gentlemen, thank you for your time. Thank
4 you for your service, especially during all of this, a little
5 more unusual than even usual. And thank you in advance for
6 your careful deliberation on behalf of all of the parties. We
7 really appreciate it.

8 THE COURT: Thank you. You have 10 minutes left.
9 Then we'll excuse you for the day and thank you for your
10 patience.

11 MR. DE VRIES: Mr. Thomas, I'm going to use my opening
12 deck, just a couple of slides. It's not the rebuttal deck.
13 Thank you very much.

14 Your Honor, may I remove my mask?

15 THE COURT: You may.

16 MR. DE VRIES: Your Honor, am I right that I have 10
17 minutes?

18 THE COURT: You're right, you have 10 minutes.

19 MR. DE VRIES: Okay. May I proceed, your Honor?

20 THE COURT: Yes.

21 MR. DE VRIES: Okay, members of the jury. Counsel for
22 Syntel and I agree that your deliberation and decision in this
23 case should be guided by the evidence, not by arguments from
24 attorneys. And I submit that if you look at the evidence,
25 you'll reach the just result.

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Rebuttal - Mr. De Vries

1 Mr. Thomas, can we please go to slide 21 in my deck.

2 Syntel did obviously very bad things. There was no
3 response to this. They copied the computer code that had been
4 written by my client's engineers into a tool that they renamed
5 the D2 Data Dictionary and sold to others. That's obviously
6 wrong.

7 Please go to the next slide, Mr. Thomas.

8 The Step-up Probe tool, they wanted to create it based
9 on the spreadsheet that was attached that says TriZetto
10 confidential and proprietary. That's obviously wrong.

11 And if we can go, Mr. Thomas, to slide two, please.

12 Her Honor instructed you during the trial that Syntel
13 misappropriated TriZetto's test cases and automation scripts.
14 That means if those were trade secrets, and they obviously
15 wanted them, so they clearly are, that means that they
16 unlawfully used my client's trade secrets.

17 You can take that down, Mr. Thomas.

18 They got caught. And what did they do? They denied
19 it. For years. You heard nothing to contradict what I told
20 you, which is until this trial, six years later, they denied
21 that they had taken the trade secrets. We're able to show you
22 that that was false.

23 So now, they have new excuses. Literally more excuses
24 than I can count, and certainly more than I can ever respond to
25 in 10 minutes. And they're different excuses than the ones

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Rebuttal - Mr. De Vries

1 that they had before trial. Before trial, they said that they
2 didn't use them. Now, they're going back into an agreement
3 creating arguments through the lawyers to say that it was okay
4 somehow. Yeah, we did it, but it's okay.

5 But if you trust yourself to look at the evidence,
6 what you'll see is that no one at Syntel believed any of those
7 excuses. All of the arguments that it's presented at this
8 trial, that's not actually what was motivating them. They
9 didn't actually think they could steal our source code and put
10 it into their products and call it their own. They didn't
11 actually think they could just steal all of our trade secret
12 test cases and automation scripts and then go use them. Look
13 at the evidence and you'll see the truth and the just result.

14 They say that it was my client's fault. Not only does
15 Syntel not take responsibility for what it's done, they
16 actually say that it was TriZetto's fault. That TriZetto
17 should have said something earlier. They should have sued
18 earlier. They should have said, hey, wait, stop.

19 But think about it. We didn't even know about the
20 things I just showed you until years in this litigation, this
21 lawsuit. And even then, only after a neutral forensic examiner
22 came and found not only use, but movement of files. I'm sorry.
23 Possession, but movement of files, which Dr. Bergeron told you
24 that's use. In 2017, at the same time that they were denying
25 using the trade secrets.

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Rebuttal - Mr. De Vries

1 And another thing, one of their excuses is that we
2 didn't prove that they used it after May of 2016, but you'll
3 remember, I walked you through that evidence in three different
4 slides. That excuse is because they don't want to have to pay
5 the avoided costs that the verdict form you'll see will tell
6 you, and her Honor's instructions, are available under the
7 Defend Trade Secrets Act. We are the only one who has
8 presented that number. They've provided no alternative
9 calculation. It is what needs to be paid under the law when
10 you violate the United States trade secret law.

11 And we've showed you, and it wasn't just through our
12 experts. Mr. Moore, I asked him, and I showed you just before,
13 he admitted that they were using the tools in 2018, years after
14 2016. And of course, they're still up on the web today. The
15 same things. The upgrades, the Data Dictionary, the test cases
16 and automation scripts, all of these services that they have
17 been offering using the trade secrets for many years.

18 And all the other excuses, I tried my best to address
19 them in my opening remarks.

20 Did TriZetto give them the trade secrets? Yeah. But
21 explicitly only to be used to do work for us. And although
22 there was a lot of lawyer argument about what it was that the
23 contract allowed, again ask yourself, what does the evidence
24 show.

25 Mr. Thomas, please show slide five from my opening

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Rebuttal - Mr. De Vries

1 presentation.

2 Mr. Reddy said that if someone stood up and said it
3 was okay to use TriZetto's trade secrets to compete because of
4 the amendment, that would be flat wrong. And he admitted, he
5 knew, that when Syntel was competing against TriZetto, Syntel
6 was not allowed to use TriZetto's proprietary, confidential,
7 trade secret or copyrighted information.

8 That's what the evidence tells you. No amount of
9 lawyer argument about contract provisions can change what they
10 have admitted. They did something that is obviously wrong, and
11 they've taken no steps to remediate it or to apologize for it.
12 They say that it's just competition. Anything goes.

13 But you heard them, their witnesses tell you that, no,
14 it's unfair competition to use our trade secrets, nothing about
15 this 2012 amendment allowed them to do what they did. And of
16 course, as I said, we didn't know what they did until we got
17 into this lawsuit.

18 They said that the trade secrets are on the internet.
19 That's not where they got them from. That related to three
20 manuals out of the 104 trade secrets. They weren't the same
21 version, they were from years earlier, and common sense will
22 tell you, of course, the trade secrets are not on the internet.

23 And what about patents? You weren't shown any patent
24 that actually disclosed any of the trade secrets. The only
25 patent that's come up in this trial is 40 pages long, and the

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Rebuttal - Mr. De Vries

1 point of the five-story building, if I'm remembering the height
2 right, was to show if you were to print out all of the trade
3 secrets that they took, improperly, and used, just how much
4 material is there. And that's material that it took TriZetto
5 decades and hundreds of millions of dollars to develop, and
6 they should have to pay for what they took.

7 What about the their claims against TriZetto? They're
8 grasping of straws. Read her Honor's instructions. It's not
9 any information that's used, it's only confidential
10 information. And the information that we're talking about is
11 information about co-workers, their name, what are they working
12 on, what is their phone number. Okay. And about salaries.
13 Mr. Sanders already told you they didn't have the salaries.
14 That's not something that TriZetto paid. But more importantly,
15 Mr. Moore admitted to me they had no policy over at Syntel
16 prohibiting anyone from sharing that information. It's simply
17 not confidential. And that's the only thing that that contract
18 prohibits.

19 And another thing. It's not an excuse. Their claims
20 do not excuse the theft of their trade secrets. It's been six
21 years of a lawsuit, many days for you all to sit here, and I
22 thank you again for doing that. I would ask you as you
23 deliberate to think about what they've done. They have not
24 apologized, they've not taken responsibility, they have not
25 taken accountability, and as I said at the beginning of my

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1 remarks today, they won't listen to anyone, but they have to
2 listen to you. And unless you find that they took the trade
3 secrets and award the maximum damages that the law provides,
4 other companies will see this case as a playbook for what to
5 do, and that's a kind of lawless society that I for one don't
6 want to live in.

7 Thank you again for your time. This is the last thing
8 I am going to say. And on behalf of I know everyone in the
9 courtroom, thank you again for your sacrifice in being here and
10 doing your service. We all greatly appreciate it.

11 THE COURT: Thank you, Mr. De Vries. Ladies and
12 gentlemen, everybody's been thanking you, but I want to thank
13 you as well. You have been so patient and very attentive and
14 we all so much appreciate it.

15 So tomorrow I have the verdict form which I'll give to
16 you and show you and then you'll begin your deliberations. The
17 question is what time should we start. I'm thinking 9:30 is
18 probably a good time just so you'll have a full day. Unless
19 there is a unanimous view that that we need to start earlier or
20 later than that. But I think 9:30 is probably --

21 A JUROR: That's fine.

22 THE COURT: Okay. So we'll see you at 9:30 tomorrow
23 morning. Get a good night's sleep. Don't even think about
24 this. And we'll see you tomorrow. Please leave all your
25 notes, everything that I passed out to you, everything here.

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1 And we'll lock up overnight.

2 (Jury excused)

3 THE COURT: Counsel, thank you for all your work and
4 your exchange of drafts with the Court over the weekend. I
5 really appreciate that. Without that, I don't know how we
6 would have gotten here.

7 I wish you all a good night and see you tomorrow at
8 9:30.

9 (Adjourned until October 27, 2020, at 9:30 a.m.)

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1 INDEX OF EXAMINATION
2

	Examination of:	Page
3	DANIEL MOORE	
4	Redirect By Mr. Groombridge	710
5	JOHN PLUMPE	
6	Direct By Ms. Janghorbani	713
7	Cross By Mr. De Vries	755
8	Redirect By Ms. Janghorbani	768
9	GLENN SHEETS	
10	Direct By Ms. Parker	770
11	Cross By Ms. Carson	785
12	Redirect By Ms. Parker	792
13	THOMAS BRITVEN	
14	Direct By Ms. Carson	794
15	Cross By Mr. Groombridge	800
16	Redirect By Ms. Carson	822

17 DEFENDANT EXHIBITS
18

Exhibit No.	Received
19 1541 and 1546	830